No. 95-244

IN THE

Supreme Court of the United States

OCTOBER TERM, 1995

CHUCK QUACKENBUSH, Insurance Commissioner of the State of California, in his capacity as Liquidator and Trustee of the Mission Insurance Company Trust, Mission National Insurance Company Trust, Enterprise Insurance Company Trust, Holland-America Insurance Company Trust and Mission Reinsurance Corporation Trust,

Petitioner,

vs.

ALLSTATE INSURANCE COMPANY,

Respondent.

Petition for Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit

BRIEF OF THE COMMONWEALTH OF MASSACHUSETTS AND THE DIRECTOR OF INSURANCE OF THE STATE OF MISSOURI AS *AMICI CURIAE* IN SUPPORT OF PETITIONER, CHUCK QUACKENBUSH, INSURANCE COMMISSIONER OF THE STATE OF CALIFORNIA

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INTEREST OF *AMICI CURIAE*

Both the Commonwealth of Massachusetts and the State of Missouri, through the respective chief officials of their insurance

departments, have in force comprehensive statutory provisions for the regulation of insurance within their jurisdictions. As part of this comprehensive system, the two also provide for regulating the insurance companies subject to their jurisdiction when those companies become financially impaired.

The Commonwealth of Massachusetts extensively regulates the business of insurance. Linda Ruthardt is the Commissioner of Insurance of the Commonwealth of Massachusetts ("Commissioner"). The Massachusetts Legislature has given the Commissioner "very broad supervisory powers over insurance companies." *Commissioner of Insurance v. Century Fire & Marine Insurance Co.*, 373 Mass. 473, 476-77, 367 N.E.2d 842 (1977). In particular, she "has long been charged by statute with the responsibility to oversee the financial stability of insurance companies." *Maryland Casualty Co. v. Commissioner of Insurance*, 372 Mass. 554, 562, 363 N.E.2d 1087 (1977). The Legislature has enacted a comprehensive statutory scheme to provide for the supervision, rehabilitation and liquidation of troubled companies doing business in the Commonwealth. *See* Mass. G.L. c. 175J (supervision); Mass. G.L. c. 175, § 6 (receivership); Mass. G.L. c. 175, §§ 180A-180L (rehabilitation and liquidation).

The Massachusetts Legislature has placed the process of conserving, rehabilitating or liquidating insurers under the direct supervision of the Supreme Judicial Court. *See* Mass. G.L. c. 175, §§ 6, 180B, 180C. These statutes require the Commissioner to apply to the single justice session of the Supreme Judicial Court for appointment as a receiver. Over recent years, the Commissioner has been appointed domiciliary or ancillary receiver for the purposes of rehabilitating or liquidating several insurance companies. She is presently receiver of three Massachusetts insurers, subject to the continuing oversight of the Supreme Judicial Court.[1]

Jay Angoff is the duly appointed Director of the Department of Insurance of the State of Missouri. In that capacity, he acts as statutory supervisor, rehabilitator and liquidator of troubled and insolvent insurance companies in both domiciliary and ancillary proceedings relating to the management of those types of entities. §§ 375.954, 375.958, 375.1174, 375.1160, 375.1166 and 375.1176, RSMo 1994. In serving in these capacities, the Director operates under a comprehensive system for the exercise of the state's police power in protecting the public and specific policyholders from the financial difficulties of affected insurance companies. *Klaber v. O'Malley*, 90 S.W.2d 396 (Mo. 1936); *Lucas v. Manufacturing Lumbermen's Underwriters*, 163 S.W.2d 750 (Mo. 1942); *Medallion Insurance Co. v. Whartenbee*, 568 S.W.2d 599, 601 (Mo. App. 1978). Further, by statute, the Director acts under the direct oversight of the Circuit Court of Cole County in carrying out these functions. Mo. Rev. Stat. §375.1182.5 (1994).

The Commonwealth of Massachusetts and the State of Missouri have an interest in this case for a variety of reasons. First, and foremost, the core issue of the interjection of federal courts into a comprehensive state regulatory scheme involving the financial condition of insurance companies will substantially affect the ability of the two State insurance regulators to carry out the state statutory mechanisms for dealing with financially impaired companies, whether those companies be in liquidation, rehabilitation or supervision.

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[1] *Commissioner of Insurance v. American Mutual Liability Insurance Co., et al.*, No. 89-23 (Supreme Judicial Court for Suffolk County (liquidation); *Commissioner of Insurance v. Monarch Life Insurance Co.*, No. 94-268 (Supreme Judicial Court for Suffolk County (rehabilitation); *Commissioner of Insurance v. Abington Mutual Insurance Co.*, No. 95-278 (Supreme Judicial Court for Suffolk County (rehabilitation).

Second, the Commonwealth and the State are interested because the federal courts in both States have taken a position on the issue before the Court which is diametrically opposed to the position of the Ninth Circuit. In *Wolfson v. Mutual Benefit Life Ins. Co.*, 51 F.3d 141 (8th Cir. 1995), the Eighth Circuit (the Circuit within which the State of Missouri is located) held that *Burford* abstention is not dependent on the existence of equitable remedies in the case. In *Doughty v. Underwriters at Lloyds, London*, 6 F.3d 856 (1st Cir. 1993), the First Circuit (the Circuit within which the Commonwealth of Massachusetts is located) held that a district trial court did not abuse its discretion when it abstained from exercising jurisdiction under such circumstances.

The *amici* assert that the Ninth Circuit approach in *Garamendi v. Allstate Insurance Co.*, 47 F.3d 350 (9th Cir. 1995), incorrectly states the law with respect to abstention, particularly in the area of the regulation of financially impaired insurers. The adoption of the Ninth Circuit approach will substantially impede their State insurance regulators in their ability to effectively regulate the financial impairment of insurance companies within their jurisdictions.

Both *amici* have a substantial interest in seeing that a financially troubled insurer is supervised, rehabilitated or liquidated in a manner which best protects the policyholders of the company, its creditors and the general public. This interest includes, and is best furthered by, a system of regulation comprised of a single regulator subject to the control of a single judicial forum in the delinquency proceeding. This issue is not one limited to the State of California. It will affect the capacity of each of the State insurance regulators to alleviate the threat to public welfare posed by financially impaired insurance companies. This brief is intended to provide the Court with a perspective national in scope of how the abstention issue affects the state regulator in his or her regulation of financially troubled insurers, particularly those in liquidation proceedings facing reinsurance issues.

SUMMARY OF ARGUMENT

I.

Every state has established a comprehensive system of regulation of insurers in the area of supervision, rehabilitation and liquidation of financially impaired insurers. Abstention by federal courts in cases before them is particularly apt to these type of proceedings under *Burford v. Sun Oil Co.*, 319 U.S. 315 (1943). Litigation in the federal courts in this area can only lead to a disruption of state efforts to establish a coherent policy with respect to administration of the affairs of financially impaired insurers. The Ninth Circuit's decision in *Garamendi v. Allstate Insurance Co.*, 47 F.3d 350 (9th Cir. 1995), incorrectly decided that a federal district court could not abstain from exercising jurisdiction in actions at law in cases closely related to the collection and distribution of assets of the insolvent company's estate.

The Ninth Circuit's conclusion that the decision to abstain is to be based on archaic classifications rather than contemporary policy considerations must necessarily result in decisions which thoughtful reflection would regret. Considerations of comity and respect for the federal nature of our political system present a more rational basis to resolve the abstention issue. The Ninth Circuit approach would establish a restricted gateway through which a party bringing the abstention issue to the court must first pass in order to have the issue considered. Under this view, only those carrying the equity "password" would be allowed to enter accompanied by the issue of abstention. Those who carry the law "password" must leave the issue at the gateway upon entry.

The abstention issue was not intended to be so limited. A decision based on the allocation of power between an equity chancellor and a judge at law is not adequate to resolution of an issue seeking to balance the substantial interests of the States in an unfettered comprehensive scheme of regulation and the

Federal interest in providing a federal forum for disputes. As the district court recognized, abstention is necessary in order to leave to the state courts the determination of the legal issues so inextricably intertwined with the state's substantial interest in controlling and supervising the processes of rehabilitation and liquidation. Abstention is proper in this case. The decision of the Court of Appeals should be reversed.

ARGUMENT

A.

ABSTENTION IS A BALANCING PROCESS CALLING FOR A WEIGHING OF STATE AND FEDERAL INTERESTS, NOT A MECHANICAL TEST BASED ON THE FORM OF ACTION.

Abstention[2] is a doctrine of the federal courts rooted in policy not forms of actions. While there are policy reasons justifying independent analysis of cases arising under the different types of abstention, *New Orleans Public Service, Inc. v. Council of New Orleans*, 491 U.S. 350, 359-60, 109 S.Ct. 2506, 2513-14, 105 L.Ed.2d 298 (1989), abstention doctrines reflect the federal nature of our political system ("Our Federalism") and the need for comity between the States and National government. Abstention is appropriate to "a proper respect for state functions, a recognition of the fact that the entire country is made up of a Union of separate state governments, and a continuance of the belief that the National Government will fare best if the States and their institutions are left free to perform their separate functions in their separate ways." *Younger v. Harris*, 401 U.S. 37, 44-45, 91 S.Ct. 746, 750-51, 27 L.Ed.2d 669 (1971). Implicit in the abstention doctrine is a balancing, a "sensitivity to the legitimate interests of both State and National Governments, and

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[2] The terms "abstention" and "abstain" are used in this brief in their generic sense to refer to the doctrines by which a federal court determines to not exercise jurisdiction over a case in deference to a State proceeding involving the same parties and issues. While the Court has noted that there are actually two remedies which must follow from the application of the "abstention" policy (deferral and dismissal), *Growe v. Emison*, ___ U.S. ___, 113 S.Ct. 1075, 1080 & n. 1 (1993), the issue addressed by the amici here is whether the principle which calls for deferral and abstention should be applied to actions at law.

in which the National Government, anxious though it may be to vindicate and protect federal rights and federal interests, always endeavors to do so in ways that will not unduly interfere with the legitimate activities of the States." *Id.* Thus, the consideration of the abstention issue, in any context, should focus on the relative interests of the Federal and State Governments involved and not on the form of action or relief to be afforded.

B.

THE STATE INTEREST IN A COMPREHENSIVE RECEIVERSHIP PROCEEDING OUTWEIGHS THE FEDERAL INTEREST IN PROVIDING A FEDERAL FORUM.

This action grew out of the financial impairment of the Mission Insurance Companies. Initially, those companies were placed in conservatorship by the courts of California on October 31 and November 26, 1985.[3] Subsequently, on March 5, 1987, the companies were placed in liquidation. The Commissioner of Insurance of the State of California was appointed as receiver for the companies in liquidation.

The dispute between the Receiver and Allstate Insurance Company stemmed from reinsurance contracts between the insolvent companies and Allstate which involved both companies reinsuring the primary insurance obligations of the other. Allstate filed several claims in the liquidation proceedings, as did other reinsurers of the insolvent companies. [Petition for Writ of Certiorari at 7 & n. 13.] The claims raised the same issues which were presented to the district court. [*Id.*] In June of 1990, the Receiver brought suit against Allstate and other reinsurers to recover money due the estate under the reinsurance contracts.

[3] Unless specifically noted otherwise, the discussion of the facts specific to this case are taken from the decision of the Court of Appeals.

The causes of action in that suit consisted of declaratory relief, breach of contract, and various civil conspiracy theories.[4]

Allstate removed the action to the United States District Court for the Central District of California on the basis of diversity jurisdiction. Diversity was obtained because all non-diverse parties were settled out of the case. [Order of District Court, Appendix B to Petition for Writ of Certiorari at 15a-16a.]

These case-specific facts serve as a back-drop for a consideration of the two interests to be balanced in the consideration of the abstention issue. There are two factors of note concerning these facts. First, as to the interests of the State, the action arose within the confines of a liquidation proceeding of an insolvent insurance company. Thus, the weight to be afforded the State is to be determined on the basis of the importance of these proceedings to the State. Second, as to the Federal interest involved, federal jurisdiction was premised on diversity jurisdiction. There was no federal question arising out of a federal statute or constitutional provision which would control the substantive rights of the parties.

1. The Strong State Interest in Consolidated Regulation of Troubled Insurers Has Long Been Recognized.

State regulation of insolvent insurance companies dates back to at least 1851 when New York passed a statute permitting the state comptroller to apply to a state court for the dissolution and liquidation of a life insurance company on a showing that its

[4] This was the second suit brought by the Receiver against a group of reinsurers of the insolvent companies. The first case involved approximately 300 reinsurers of the companies. That action was consolidated with the liquidation proceedings.

assets were insufficient to meet its obligations. Laws of 1851, ch. 95, § 6, Denio & Tracy's Revised Statutes of the State of New York I:1288, § 30 (1852). Subsequently, state regulation of insurance company insolvency has become increasingly more complex with the result that current statutes provide for a unitary, integrated process of regulation of companies which are financially impaired. *See, generally,* S. Kimball, *History and Development of the Law of State Insurer Insolvency Proceedings: An Overview*, in "Law and Practice of Insurance Company Insolvency," (American Bar Ass'n 1986)(hereafter Kimball). The modern statutes, with rare exception, are premised on either the National Conference of Commissioners on Uniform State Laws' Uniform Insurer's Liquidation Act (hereafter the Uniform Insurer's Liquidation Act) or the National Association of Insurance Commissioners' Model Supervision, Rehabilitation, and Liquidation Act (hereafter the NAIC Model Act). *Id.* at 37. The Uniform Insurer's Liquidation Act was adopted by the National Conference of Commissioners on Uniform State Laws in 1939. *Id.* at 21. The NAIC Model Act was adopted in 1977 by the National Association of Insurance Commissioners, but was largely based on the Wisconsin Liquidation Act, Wis. Stat. Ann. §§ 645.01 -.90 (West 1995), which had been passed in 1967. Kimball at 39.

An overriding purpose of both the Uniform Insurer's Liquidation Act and the NAIC Model Act was to provide for a comprehensive regulation of the insolvency process.[5] This is made clear

[5] Amici's focus on regulation of insolvency as the State interest most directly presented by this case is not intended to exclude other interests. The States have strong interests in the comprehensive regulation of the condition of troubled insurers through all manner of delinquency proceedings, including administrative supervision, conservatorship and rehabilitation proceedings. The States' interests encompass receiverships of insurers to reduce the

(Footnote 5 continued on next page)

in the comments to the Wisconsin statute on which the NAIC relied in drafting their Model Act:

> Par. (f) has a precise purpose. It is intended to make it clear beyond doubt that this chapter is perceived by the legislature as, and in fact is, part of the regulatory structure. It is a part of the regulatory system because this chapter will have considerable effect on the way the insurance business is conducted by reinsurers, agents, premium financiers, and others.

Wis. Stat. Ann. § 645.01, *comment on sub. (4)* (West 1995). Thus, under paragraph (f) of that section, the means by which the interests of insureds, creditors and the general public are to be protected is to extend regulation of the insurance industry to delinquency proceedings. *Id.* § 645.01 (4) (f). The NAIC Model Act incorporated this same concept in its statement of purpose: "Providing for a comprehensive scheme for the rehabilitation and liquidation of insurance companies and those subject to this Act as part of the regulation of the business of insurance, insurance industry and insurers in this state. Proceedings in cases of insurer insolvency and delinquency are deemed an integral aspect of the business of insurance and are of vital public interest and concern." NAIC Model Act, § 1.D (7). *See,*

(Footnote 5 continued)

risk of loss due to mismanagement, and not just after-the-fact liquidations to minimize unavoidable loss. *See Kuecklehan v. Federal Old Line Insurance Co.*, 69 Wash.2d 392, 418 P.2d 443, 461 (1966); *Attorney General v. North American Life Insurance Co.*, 82 N.Y. 172, 184-85 (1880). As illustrated by the Wisconsin statute, one of the primary purposes of the modern statutes is "Early detection of any potentially dangerous condition in an insurer, and prompt application of appropriate corrective measures, neither unduly harsh nor subject to the kind of publicity that would needlessly damage or destroy the insurer . . . ." Wis. Stat. Ann. § 645.01(4)(a) (West 1995). This concept of early detection and intervention and measures short of liquidation is said to pervade the entire statutory chapter on troubled insurers. *Id., comment to sub. (4)(a).*

Appendix, § IV at A-11 to A-12.. The Court has also recognized that the insolvency process involves the regulation of insurance. *United States Department of the Treasury v. Fabe*, ___ U.S. ___, 113 S.Ct. 2202, 2210, 124 L.Ed.2d 449 (1993).

A survey of the statutes of the States on the liquidation process, *see* Appendix, evidences a consensus on the two overriding principles which will lead to a liquidation which best protects the policyholders, creditors and the general public. These are (1) that consolidation of the proceedings to the greatest extent possible benefits all concerned: and (2) regulatory decisionmaking within the context of liquidtion best is done by the person with the greatest knowledge of the complexities of the insurance industry. This person is the State's insurance regulator. This second principle recognizes that this person, under the oversight of a state court, should make the primary decisions concerning the liquidation process. The statutory provisions touching on the abstention issue implement one or both of these overriding principles.

The roles of the parties to the liquidation proceeding and their interests are also important. In the overwhelming number of insurance company receiverships, an insurer is put into liquidation because it is financially troubled and that financial condition poses a threat to the interests of the policyholders, creditors and the general public. *See* Appendix § IX at A-18 to A-23. The State insurance regulator as liquidator is solely concerned with what is best and fairest for all concerned — how are a limited, usually insufficient, amount of assets to be distributed among competing claims?

There are two factors which will largely influence the success of the liquidator in his or her efforts. These are the marshalling of assets and the resolution of claims. Experience has shown that there may be a dispute as to an entitlement to or the amount of either. In determining the interest of the State, then, in the abstention equation (and, for that matter, the Federal interest) it

should be borne in mind that the holder of the disputed asset or claim enters any action on that dispute with a goal of maximizing its benefit at the expense of those interested in the liquidation estate. It should also be borne in mind that the liquidation statutes have provided for the fair and efficient resolution of these adversarial disputes within the liquidation court through procedures to be conducted before a neutral, competent tribunal.

Consolidation of control over the proceedings by which the insolvency is regulated is the first of the two common and overriding principles embodied in th comprehensive state statutory schemes. *See Garamendi v. Executive Life Ins. Co.*, 21 Cal. Rptr. 2d 578, 585 (Cal. App. 1993), *review denied* 1993 Cal. LEXIS 5639 (1993); *In re Rehabilitation of Mutual Benefit Life Insurance Co.*, 609 A.2d 768, 774 (N.J. App. Div. 1992). The Wisconsin statute was modeled after the federal bankruptcy act then in existence in part to provide for the singular control over the process afforded by that act. *See* Wis. Stat. Ann. ch. 645 *Preliminary Comment*, Liquidation (West 1995). Proceedings in accordance with the state's chapter on liquidation of insurers is the sole and exclusive means of liquidating, rehabilitating, reorganizing or conserving an insurer. *See* Appendix, § VII at A-16 to A-17. On issuance of an order of insolvency, no action may be taken or continued against an insurer or the liquidator outside of the insolvency proceedings. *See* Appendix, § XVI at A-33 to A-34. The ability to put an insurer into receivership is premised on various standards, including that the company has been the subject of successful or attempted liquidation proceedings other than a proceeding under the state's insurer delinquency chapter.[6] *See* Appendix, § IX at A-18 to A-23.

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[6] The intent of this type of provision is to prevent insurers from placing themselves voluntarily into liquidation proceedings, as such proceedings would not necessarily "follow an approved pattern for liquidation," and, thereby not provide the regulatory protection provided by the insurance insolvency statutes over the liquidation of the assets. Wis. Stat. Ann. § 645.41 (7), *comment on sub. 7* (West 1995).

This concept of consolidation is also carried out in the provisions dealing with the claims process. With respect to claims against the estate, the insolvency proceedings are the exclusive forum for the filing and resolution of claims. Any judgment against the insolvent insurer entered in a proceeding outside the insolvency proceeding and after the entry of the order of insolvency does not have to be considered as proof of the insolvent insurer's liability or the amount of damages. *See* Appendix, § XX at A-40 to A-41. In other words, such a judgment entered outside of the receivership proceedings may be treated as advisory only within the proceedings themselves.

Equally emphasized in the statutes is the second principle that control over the proceedings must be vested in the State insurance regulator. The state insurance regulator is normally the only one who can seek a court order for liquidation of a company.[7] *See* Appendix, § V at A-12 to A-14. With only one exception, the state insurance regulator is required to be appointed as receiver in the proceedings. *See* Appendix, § X at A-23 to A-25.

In the capacity of receiver, the state insurance regulator succeeds to the title of the assets of the insolvent insurer and is directed to take possession of those assets. *See* Appendix, § XI at A-25 to A-27. To accomplish this, the state insurance regulator has the power to take the actions necessary to collect those assets, including intervention in proceedings outside the state in order to protect the assets and prevent outside forums from exercising control over them. *See* Appendix, §§ XII at A-28 to 29; XIV at A-30 to A-31; XV at A-32 to A-33; XVII at A-34 to A-35. As receiver, the state insurance regulator is given substantial discretion as to the forum in which he may proceed

[7] There is an exception in those states adopting the NAIC Model Act which allows for three creditors of the company to seek a liquidation order, but only after allowing the state insurance regulator the opportunity to review the complaint and take action. *See* Appendix § VI at A-14 to A-15.

to collect the assets of the estate or otherwise carry out the duties of his office. *See Id.* As outlined in the comments to the Wisconsin statute, this discretion is a necessary component of the regulatory process:

> The entire subject of the effect of liquidation upon actions brought elsewhere is very complex. What the statute does is to give the liquidator all possible tools and leave it to him to decide, in a concrete context, which ones to use and how to use them. This is the reason for empowering the commissioner to intervene in foreign lawsuits, and to petition for immediate dissolution, among other powers.

Wis. Stat. Ann. § 645.49, *comment on sub. (1)* (West 1995).

The foregoing survey of the statutory framework for insurance insolvency proceedings illustrates the substantial interest of the States in maintaining control over the insolvency process as an integral part of their regulation of insurance. Except in rare circumstances, the State's regulatory interest will dictate that all matters related to the insolvency be consolidated in a single legal forum. In those rare circumstances when resort to another forum may be undertaken, it is the result of an informed determination by those responsible for the regulation of the insolvency process that the best interests of the State are carried out by allowing a separate forum to consider a question or questions related to the liquidation of the company. This interest was recognized by the federal courts even before the adoption of the more comprehensive insurance insolvency codes:

> Experience has demonstrated that, in order to secure an economical, efficient, and orderly liquidation and distribution of the assets of an insolvent corporation for the benefit of all creditors and stockholders, it is essential that the title, custody, and control of the assets be intrusted to a single management under the supervision of one court. Hence, other courts, except when called upon by the court of

primary jurisdiction for assistance, are excluded from participation. This should be particularly true as to proceedings for the liquidation of insolvent insurance companies for the reasons adverted to by Mr. Justice Cardozo in *Clark v. Willard*, 292 U.S. 112, 123 [(1934)].

Motlow v. Southern Holding & Securities Corp., 95 F.2d 721, 725-26 (8th Cir.), *cert. denied*, 305 U.S. 609 (1938).

2. As An Important Asset of An Insurer, Reinsurance Is Necessarily an Integral Part of Insurance Receivership Proceedings.

Within the general framework of state regulation of insurance insolvency, there is the more specific consideration of the role of reinsurance within that regulatory process. First, it should be noted that reinsurance is at the core of a company's financial status. Reinsurance recoverables are treated as assets of the ceding company. *See* Appendix, § I at A-1 to A-2. More importantly, the mere existence of reinsurance will determine the amount of surplus and reserves required to be maintained by a company, reinsurance being allowed as a credit to the company's assets or a deduction from its liabilities, thereby reducing the amount of liquid assets which a company must maintain. *See* Appendix, §§ II at A-2 to A-10; III at A-10 to A-11. The reinsurance relationship is going to have a significant role in determining whether a company is financially impaired and subject to regulation as an insolvent insurer.

In fact, reinsurance practices resulting in reinsurance proceeds becoming uncollectible are seen as one of the contributing factors to many insurance company insolvencies. F. Semaya, *Insurance Insolvency - Where We Are Today* in "Law and Practice of Insurance Company Insolvency Revisited" 1, at 10-11 (American Bar Ass'n 1989) (hereafter Semaya). It is also specifically recognized by the Hawaii statute on supervision, rehabilitation and liquidation, that the troubled financial condition of a ceding company's *reinsurer* may be grounds for

instituting delinquency proceedings against the *ceding company*.[8] Haw. Rev. Stat. §431:15-103.5 (5) (1993).

Reinsurance is also integral to the insurer insolvency proceedings. "Just as reinsurance is important to the operations of an insurer, it is equally important to a receiver. Reinsurance receivables often represent the estate's largest asset." National Association of Insurance Commissioners, "Receivers Handbook for Insurance Company Insolvencies at 7-1 (NAIC 1992).[9] In the receivership proceeding underlying this case, it was estimated that there was over $400,000,000.00 in reinsurance receivables due the estate. [Complaint, ¶ 9, *Roxani Gillespie v. Allstate Insurance Co. et al.*, Case No. 6751868 (Superior Court

[8] The statute provides that among the factors which will support a determination that continued operation of a company would be hazardous to policyholders, creditors and the general public is "[t]he ability of an assuming reinsurer to perform and whether the insurer's reinsurance program provides sufficient protection for the company's remaining surplus after taking into account the insurer's cash flow and the classes of business written as well as the financial condition of the assuming reinsurer. . . ." Haw. Rev. Stat. § 431:15-103.5 (5) (1993). *See also*, Md. Ins. Code Ann. § 1318(5) (Supp. 1995); R.I. Gen. Laws § 27-14.2-2 (1994).

[9] *See, also*, D. Spector, *Rights and Obligations of Reinsurers of an Insolvent Ceding Company — A Consideration of Selected Issues*, in "Law and Practice of Insurance Company Insolvency Revisited" 685, at 685 (American Bar Ass'n 1989) ("The breath, body, and blood of the relationship between a reinsurer and the receiver of its insolvent reinsured is the reinsurance proceeds. For many, perhaps most, insolvent insurance company estates, reinsurance is the principle mechanism for financing payment of policyholder and guaranty fund claims. Reinsurance collectibles are often the largest single item on the insolvent insurer's balance sheet"); P. Dassenko, *Obligations and Duties of the Liquidator to Reinsurers: A Liquidator's Perspective* in "Law and Practice of Insurance Company Insolvency Revisited" 661, at 662 (American Bar Ass'n 1989) (hereafter Dassenko) ("One of the major assets of an insolvent insurance company's estate is the right to receive reinsurance proceeds. Therefore, much if not most of the liquidator's time will be spent managing relationships with reinsurers towards the collection of all reinsurance proceeds due the estate").

for the County of Los Angeles).] The suit by the Receiver in *Doughty* sought to recover $15,000,000.00 in overdue reinsurance indemnities. 6 F.3d at 859. As an asset, reinsurance recoverables would be available for distribution to those with claims against the estate, when collected, but may also be used by the receiver as security for loans made to the estate. *See* Appendix, § XIII at A-29 to A-30.

In some states, in recognition of the status of reinsurance recoverables as an asset of the estate, the chapter on delinquency proceedings state that the amount of a reinsurer's liability will not be reduced by the fact that the ceding insurer is in receivership. *See* Appendix, § XIX at A-39 to A-40. In other states, the very nature of the reinsurance relationship is transformed through what are known as statutory insolvency clauses. These clauses, required to be included in contracts of reinsurance if a company wants to use the reinsurance in determining its financial condition, obligate the reinsurer to pay claims based on the liability of the ceding company even though it has not paid on a claim, as opposed to payment on an indemnity basis. Spector, at 697-700. Both of these types of clauses account for the fact that, typically, most reinsurance contracts are contracts of indemnity requiring the reinsurer to pay only if the ceding company has paid a loss. The effect of these clauses is to increase the assets potentially available to the estate and to make the reinsurance recoverables generally available for distribution. In another statutory provision directed at reinsurers and designed to assist in the marshalling of the estate's assets, those entering into reinsurance contracts with an insurer in rehabilitation or liquidation are subject to the personal jurisdiction of the receivership court. *See* Appendix § VIII at A-17 to A-18.

From the standpoint of reinsurance as an asset of the insolvent company, one of the most significant provisions is the set-off provision. *See* Appendix § XVIII at A-35 to A-39. As explained by the NAIC:

> Setoff is a device which permits two contracting parties to net reciprocal debt obligations and pay only the remaining balance. It is therefore an important element of any receivership. . . .
>
> In recent years, there has been a significant increase in the number and severity of U.S. insurer insolvencies. As a consequence, there has been a commensurate increase in the value of setoff rights and the economic protection they provide for creditors. However, receivers have a fiduciary duty to assure that all of the insolvent insurer's assets be marshalled for distribution in accordance with creditor priorities established by statute. Amounts allowed to be set off will not be available for ultimate distribution to policyholders and other claimants, since such amounts are not assets of the insurer.
>
> Development of an effective approach to setoff must begin with a careful analysis of both the applicable provisions of the domiciliary state's statute and relevant case law. Setoff is an area of considerable controversy. Setoff rights may vary depending upon whether the insurer is subject to either a rehabilitation or a liquidation proceeding.

National Association of Insurance Commissioners, "Receivers Handbook for Insurance Company Insolvencies" at 7-27 (NAIC 1992). As recognized by the Ninth Circuit in the decision here under review, the effect of the set-off provision is to grant the reinsurer a first priority among claims for the amounts subject to set-off. *Garamendi*, 47 F.3d at 352 n. 5. Whether reinsurers should be given such an advantage was a matter of considerable concern and debate when the Wisconsin statute was drafted and the NAIC Model Act was adopted. Kimball at 35-36, 39-42. It is still a question of considerable controversy, both as to whether it should exist and, if existent, the extent of what is to be set off. Semaya, at 19-20; Dassenko at 663-672.

What is illustrated here is that both reinsurance and set-off are a key part of the State insurance insolvency regulatory process. Within this regulatory process, neither the issues surrounding reinsurance as an asset nor those concerning the availability or breadth of the right of set-off can be carved out of this system of regulation for separate treatment. The State has as substantial an interest in controlling the handling of this issue in the insolvency process as it does any other issue, such as the resolution of claims not subject to set-off. In terms of the federal abstention issue and the balance to be reached between the State and Federal interests in the application of the doctrine, the interest of the State is the need for the concentration of the reinsurance and set-off issues in a singular regulatory forum that minimizes interference from outside sources. Without this concentration, the complete and adequate regulation of the insolvency process becomes impaired.

3. The Federal Interest In Providing A Federal Forum Is a Minimal One In the Context of This Case.

On the Federal side of the equation, the abstention doctrine potentially implicates two Federal interests. First, there may be a federal substantive right based on the Constitution or federal statute which the National government would have an interest in seeing upheld or vindicated. *Moses H. Cone Memorial Hospital v. Mercury Construction Corp.*, 460 U.S. 1, 26-26, 103 S.Ct. 927, 941-41, 74 L.Ed.2d 765 (1983). When such an issue is present in a case, it "must always be a major consideration weighing against surrender" of jurisdiction. *Id.*

Second, and common to all abstention cases, is the Federal interest in access to its courts. This interest has been expressed by the Court in the following language: "'When a Federal court is properly appealed to in a case over which it has by law jurisdiction, it is its duty to take such jurisdiction. . . . The right of a party plaintiff to choose a Federal court where there is a choice cannot be properly denied.'" *NOPSI*, 491 U.S. at 358-59,

109 S.Ct. at 2513, *quoting Willcox v. Consolidated Gas Co.*, 212 U.S. 19, 40, 29 S.Ct. 192, 195, 53 L.Ed. 382 (1909).

In a case such as this one, based on federal diversity jurisdiction, the only Federal interest in the abstention equation which is implicated is the procedural interest of preserving access to and obtaining an adjudication from the Federal courts. There is no Federal substantive issue to be given weight in the balancing process.

C.

THE EQUITY/LAW DISTINCTION SHOULD HAVE NO ROLE IN THE DISTRICT COURT'S DECISION WHETHER TO ABSTAIN.

The Federal interest is not immutable. "'The doctrine of abstention, under which a District Court may decline to exercise or postpone the exercise of its jurisdiction, is an extraordinary and narrow exception to the duty of a District Court to adjudicate a controversy properly before it. Abdication of the obligation to decide cases can be justified only in the exceptional circumstances where the order to the parties to repair to the state court would clearly serve an important countervailing interest.'" *Colorado River Water Conservation District v. United States*, 424 U.S. 800, 813, 96 S.Ct. 1236, 1244, 47 L.Ed.2d 483 (1976), *quoting County of Allegheny v. Frank Mashuda Co.*, 360 U.S. 185, 188-89, 79 S.Ct. 1060, 1063, 3 L.Ed.2d 1163 (1959). When a declaratory judgment is sought, the standard is less strenuous. *Wilton v. Seven Falls Co.*, ___ U.S. ___, 115 S.Ct. 2137, 2143 (1995).

The underlying interests of the State in insurance insolvency proceedings do present the exceptional circumstances calling for abstention. *See Penn Central Casualty Co. v. Commonwealth of Pennsylvania*, 294 U.S. 189 (1935). The case is clearly within the factors favoring abstention as set out in *Burford v. Sun Oil Co.*, 319 U.S. 315, 63 S.Ct. 1098, 87 L.Ed.2d 1424 (1943), and

Colorado River, supra. The insolvency process involved is a well-organized system of regulation and judicial review furthering substantial State concerns to which the federal courts could make small contribution through their determination of questions of State law. *Burford*, 319 U.S. at 327, 63 S.Ct. at 1104.

Similarly, as recognized by *Fabe, supra*, the insurance insolvency process is within the pronounced federal policy to avoid federal interference with the State regulation of insurance. Where such a policy exists and federal court action would interfere with a comprehensive state system for adjudicating rights among highly interdependent relationships, abstention is appropriate. *Colorado River*, 424 U.S. at 819, 96 S.Ct. at 1247. *see, also, Arizona v. San Carlos Apache Tribe of Arizona*, 463 U.S. 545, 103 S.Ct. 3200, 77 L.Ed.2d 837 (1983). Indeed, to the extent that the federal proceedings interfere with the regulation of the insolvency process, abstention should be required under application of the McCarran Ferguson Act on the basis that the more general statute on federal jurisdiction must yield to the more specific statute restricting Federal regulation of the business of insurance. *See* 15 U.S.C. §§ 1011-15; *Fabe*, 113 S.Ct. at 2212.

There are other factors identified by the Court in its abstention cases favoring abstention in the circumstance of insurance insolvency proceedings. As noted in *Harrison County Commissioners Court v. Moore*, 420 U.S. 77, 84, 95 S.Ct. 870, 875, 43 L.Ed.2d 32 (1975) (Pullman abstention), "when the state law questions have concerned matters peculiarly within the province of the local courts, we have inclined towards abstention." Similarly, there are certain matters over which the State has primacy and the federal courts must neither affirmatively obstruct such matters nor allow themselves to be used to impede the State in those matters. *Growe v. Emison*, ___ U.S. ___, 113 S.Ct. 1075, 1081 (1993)(Pullman abstention). When the federal action is ancillary to, and in furtherance of a broader State policy of

substantial interest, abstention is justified. *Trainor v. Hernandez*, 431 U.S. 434, 444, 97 S.Ct. 1911, 1918, 52 L.Ed.2d 486 (1977)(Younger abstention). The federal courts should also abstain when the matter under consideration goes to the core of the administration of a State's established system of adjudication or regulation. *Juidice v. Vail*, 430 U.S. 327, 335, 97 S.Ct. 1211, 1217, 51 L.Ed.2d 376 (1977)(Younger abstention). The State's interest in its regulation of a profession or industry for the protection of the public, prevention of a re-occurrence of wrongs, and assurance and maintenance of high standards of conduct outweigh the Federal interests considered in the abstention issue. *Middlesex County Ethics Committee v. Garden State Bar Ass'n*, 457 U.S. 423, 435, 102 S.Ct. 2515, 2523, 73 L.Ed.2d 116 (1982).

From a policy standpoint, the support for abstention in this case is overwhelming. It has been denied by the Ninth Circuit not because the Federal interests outweigh considerations of federalism or comity, but because of a mechanical distinction between actions at law and actions in equity. The Ninth Circuit approach, as set out in *Garamendi v. Allstate Insurance Co.*, 47 F.3d 350 (9th Cir. 1995), unduly restricts the balancing called for in the abstention doctrine to cases in equity. Its approach seeks to set up a gateway to consideration of the issue. The abstention issue may only enter into a case through this gateway. If the case involves a traditional equitable relief, the issue is allowed to pass through the gateway and comes before the district court for its consideration. If it involves a traditional relief at law, the issue is denied entry to the case and consideration by the court altogether.

Within the context of the abstention issue, the distinction drawn by the Ninth Circuit between an action in equity and an action at law is an artificial one. The balance between the Federal and State interests in the case will be the same whether the case is one at law or equity. The problem with the rule announced by the Ninth Circuit is that a focus on the equity/law distinction is

a focus on the *remedy* to be afforded and not on the *jurisdictional* question of whether the State interests involved outweigh the Federal interest in vindicating and protecting the right of a party to have its case considered by the Federal court. The Court has already noted that the abstention issue is not remedy focused. *Zuickler v. Koota*, 389 U.S. 241, 254, 88 S.Ct. 391, 399 (1967), *citing Dombrowski v. Pfister*, 380 U.S. 479, 85 S.Ct. 1116, 14 L.Ed.2d 22 (1965); *Lake Carriers' Ass'n v. MacMullan*, 406 U.S. 498, 509 n. 13, 92 S.Ct. 1749, 1756 n. 13, 32 L.Ed.2d 257 (1972)("The question of abstention, of course, is entirely separate from the question of granting declaratory or injunctive relief"); *Steffel v. Thompson*, 415 U.S. 1209, 474 n. 21, 94 S.Ct. 1209, 1223 n. 21, 39 L.Ed.2d 505 (1974).

Other Circuit Courts considering abstention in light of the equity/law distinction have rejected the idea that the distinction is one which should control the balancing of the Federal and State interests undertaken by the abstention issue. *Wolfson v. Mutual Benefit Life Ins. Co.*, 51 F.3d 141 (8th Cir. 1995); *General Glass Industries Corp. v. Monsour Medical Foundation*, 973 F.2d 197 (3rd Cir. 1992). More important, there is nothing in the Court's treatment of the issue which calls for such a distinction. The Court has previously upheld or required abstention where the issues before the district court were actions at law rather than in equity. *Tafflin v. Levitt*, 493 U.S. 455, 110 S.Ct. 792, 107 L.Ed.2d 887 (1990)(RICO damages); *Fair Assessment in Real Estate Association v. McNary*, 454 U.S. 100 (1981) (damages under 42 U.S.C. § 1983); *Fornaris v. Ridge Tool Co.*, 400 U.S. 41 (1970); *United Gas Pipe Line Co. v. Ideal Cement Co.*, 369 U.S. 134 (1962); *Clay v. Sun Insurance Office Ltd.*, 363 U.S. 207, 80 S.Ct. 1222 (1960)(claim for recovery of proceeds due under insurance contract); *Louisiana Power & Light Co. v. City of Thibodaux*, 360 U.S. 25, 79 S.Ct. 1070 (1959)(condemnation action).

The Ninth Circuit dismissed the *Fair Assessment in Real Estate* and *Louisiana Power & Light* cases on the basis that these constituted "'special' classes of damage actions." This characterization highlights that the Ninth Circuit improperly focuses on remedy in setting up its gateway to the abstention issue. This Court's discussion of the special nature of the state system for taxation in *Fair Assessment* and of the power of eminent domain in *Louisiana Power & Light* was not intended as a justification for exercising the abstention doctrine in actions at law. It was an explanation of the substantial nature of the State interest involved in the proceedings.[10] Abstention in cases at law is not foreclosed.

That the equity/law distinction should not control the issue is best illustrated by *Gulfstream Aerospace Corp. v. Mayacamas Corp.*, 485 U.S. 271, 99 L.Ed.2d 296, 108 S.Ct. 1133 (1988). There the Court held that in an age where law and equity have been merged in the federal legal system, where "[s]uits that involve diverse claims and request diverse forms of relief are not easily categorized as equitable or legal," and where the continued promulgation of rights and procedures have little reference to these outmoded jurisdictional and remedial distinctions, those distinctions should no longer be controlling. 485 U.S. at 283-85. What the Court said concerning the exercise of appellate jurisdiction has equal application to the abstention issue:

> More important, the Enelow-Ettelson doctrine is "divorced from any rational or coherent appeals policy." Under the rule, appellate jurisdiction of orders granting or denying

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[10] Even if the discussion was a justification for the exercise of abstention, this case would come within the same justification. If the two cases recognize the existence of special cases at law which share the characteristics of equity proceedings, the insurance liquidation proceeding certainly comes within the ambit of that "special" type of proceeding. *See, e.g., Commonwealth of Pennsylvania v. Williams*, 294 U.S. 176 (1935)(an action in receivership involves the exercise of equitable powers).

> stays depends upon a set of considerations that in no way reflects or relates to the need for interlocutory review. There is no reason to think that appeal of a stay order is more suitable in cases in which the underlying action is at law and the stay is based on equitable grounds than in cases in which one of these conditions is not satisfied. The rule's focus on historical distinctions thus produces arbitrary and anomalous results. Two orders may involve similar issues and produce similar consequences, and yet one will be appealable whereas the other will not.

485 U.S. at 285-86. Adherence to a mechanical equity/law distinction as a precondition to consideration of the abstention issue can only ultimately result in arbitrary and anomalous results in which cases involving similar issues of State concern and having similar consequences on those interests will produce different results — one in which the federal court refrains from interposing itself in the State interest and one in which the federal court does make such an interference.

A decision based on the allocation of power between an equity chancellor and a judge in a court of law is not adequate to resolution of an issue seeking to balance the substantial interests of the States in an unfettered comprehensive scheme of regulation and the National interest in providing a federal forum for disputes. The Ninth Circuit's conclusion that the decision to abstain is to be based on archaic classifications rather than contemporary policy considerations must necessarily result in decisions which thoughtful reflection would regret . Considerations of comity and respect for the federal nature of our political system present a more rational basis to resolve the abstention issue.

When the principle underlying the abstention doctrine is applied to the facts of this case, and the issue before the Court, it becomes apparent that abstention is appropriate.

CONCLUSION

The doctrine of *Burford* abstention is not limited to actions involving equitable remedies. The Ninth Circuit too narrowly limits this doctrine in its *Garamendi* decision. The Court should overturn the decision of the Circuit Court and order it to affirm the action of the district court in abstaining in this action.

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APPENDIX

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SURVEY OF INSURANCE INSOLVENCY LAW

I. Reinsurance recoverables are an asset of the company.

Wyo. Stat. Ann. § 26-6-101.

(a) In any determination of an insurer's financial condition, only the following insurer owned assets shall be allowed:

. . .

(viii) The full amount of reinsurance recoverable by a ceding insurer from a solvent reinsurer and which reinsurance is authorized under W.S. 26-5-111[.]

Similar provisions:

Ala. Code § 27-37-1(8)(1986).
Alaska Stat. § 21.18.010 (9)(1993).
Ariz. Rev. Stat. Ann. § 20-501 (9) (1990).
Ark. Code Ann. § 23-63-601 (9) (1987).
Colo. Rev. Stat. § 10-1-102 (1.5)(h) (1994).
Conn. Gen. Stat. Ann. § 38a-71 (a)(F) (West Supp. 1995).
Del. Code Ann. tit. 18, § 1101 (8) (1989).
Fla. Stat. Ann. § 625.012 (8) (West Supp. 1995).
Ga. Code Ann. § 33-10-1 (9) (Supp. 1995).
Haw. Rev. Stat. § 431:5-201 (8) (1993).
Idaho Code § 41-601 (8) (1991).
Ky Rev. Stat. Ann. § 304.6-010 (1)(h) (Baldwin 1988).
Me. Rev. Stat. Ann. tit. 24-A, § 901.8 (West 1990).
Md. Ins. Code Ann. § 75 (8) (1994).
Mont. Code Ann. § 33-2-501 (8) (1995).
Nev. Rev. Stat. § 681B.010 (8) (1991).
N.M. Stat. Ann. § 59A-8-1 (H) (1991).
N.Y. Ins. Law § 1301 (14) (McKinney 1985).
Okla. Stat. Ann. tit. 36, § 1501.8 (West 1990).
Or. Rev. Stat. § 733.010 (5) (1993).

S.C. Code Ann. § 38-11-40(c) (Law. Co-op. Supp. 1995).
S.D. Codified Laws Ann. § 58-26-1(9) (1990).
Tenn. Code Ann. § 56-2-207(a)(2) (1994).
Utah Code Ann. § 31A-17-201(2)(f) (1994).
W. Va. Code § 33-7-1(h) (1992).
Wyo. Stat. § 26-6-101(a) (1993).

II. Reinsurance as a credit or deduction from liabilities of company.

Mass. Gen. L. ch. 174, § 20A (Supp. 1995).

(1) Credit for reinsurance shall be allowed a domestic ceding insurer as either an asset or a deduction from liability on account of reinsurance ceded only when the reinsurer meets the requirements of paragraph (A), (B), (C) or (D) or paragraph (E) of subsection 2.If meeting the requirements of paragraph (C) or (D), the requirements of paragraph (F) shall also be met.

(A) Credit shall be allowed when the reinsurance is ceded to an assuming insurer which is licensed: (i) to issue policies in the commonwealth covering risks of the same kinds as those reinsured, or (ii) to reinsure in the commonwealth risks of the same kinds as those reinsured.

(B) Credit shall be allowed when the reinsurance is ceded to an assuming insurer which is accredited as a reinsurer in this commonwealth.An accredited reinsurer is one which:

(i) files with the commissioner evidence of its submission to this commonwealth's jurisdiction;

(ii) submits to the commonwealth's authority to examine its books and records;

(iii) is licensed to transact insurance or reinsurance in at least one state, or in the case of a United States branch of an alien assuming insurer is entered through and licensed to transact insurance or reinsurance in at least one state;

(iv) files annually with the commissioner a copy of its annual statement with the insurance department of its state of domicile and a copy of its most recent audited financial statement; and either

(a) maintains a surplus as regards policyholders in an amount which is not less than twenty million dollars and whose accreditation has not been denied by the commissioner within ninety days of its submission; or

(b) maintains a surplus as regards policyholders in an amount not less than twenty million dollars and whose accreditation has been approved by the commissioner.

No credit shall be allowed a domestic ceding insurer, if the assuming insurers' accreditation has been revoked by the commissioner after notice and a hearing.

(C) Credit shall be allowed when the reinsurance is ceded to an assuming insurer which is domiciled and licensed in, or in the case of a United States branch of an alien assuming insurer is entered through, a state which employs standards regarding credit for reinsurance substantially similar to those applicable under this section and the assuming insurer or United States branch of an alien assuming insurer:

(i) maintains a surplus as regards policyholders in an amount not less than twenty million dollars; and (ii) submits to the authority of the commonwealth to examine its books and records; provided, however, that the requirement of clause (i) of paragraph (C) does not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system.

(D) (i) Credit shall be allowed when the reinsurance is ceded to an assuming insurer which maintains a trust fund in a

qualified United States financial institution, as defined in paragraph (3), for the payment of the valid claims of its United States policyholders and ceding insurers, their assigns and successors in interest.The assuming insurer shall report annually to the commissioner information substantially the same as that required to be reported on the National Association of Insurance Commissioners Annual Statement form by licensed insurers to enable the commissioner to determine the sufficiency of the trust fund.In the case of a single assuming insurer, the trust shall consist of a trusteed account representing the assuming insurer's liabilities attributable to business written in the United States and, in addition, the assuming insurer shall maintain a trusteed surplus of not less than fifty million dollars. In the case of a group of individual unincorporated underwriters, the trust shall consist of a trusteed account representing the group's liabilities attributable to business written in the United States and, in addition, the group shall maintain a trusteed surplus of which one hundred million dollars shall be held jointly for the benefit of United States ceding insurers of any member of the group; and the group shall make available to the commissioner an annual certification of the solvency of each underwriter by the group's domiciliary regulator and its independent public accountants.

(ii) In the case of a group of incorporated insurers under common administration which complies with the filing requirements contained in the previous subparagraph, and which has continuously transacted an insurance business outside the United States for at least three years immediately prior to making application for accreditation; and submits to the commonwealth's authority to examine its books and records and bears the expense of the examination, and which has aggregate policyholders' surplus of ten billion dollars; the trust shall be in an amount equal to the group's several liabilities attributable to business ceded by United States ceding insurers to any member of the group pursuant to reinsurance contracts issued in the name of such group; plus the group shall maintain joint trusteed surplus of

which one hundred million dollars shall be held jointly for the benefit of United States ceding insurers of any member of the group as additional security for any such liabilities, and each member of the group shall make available to the commissioner an annual certification of the member's solvency by the member's domiciliary regulator and its independent public accountant.

(iii) Such trust shall be established in a form approved by the commissioner.The trust instrument shall provide that contested claims shall be valid and enforceable upon the final order of any court of competent jurisdiction in the United States.The trust shall vest legal title to its assets in the trustees of the trust for its United States policyholders and ceding insurers, their assigns and successors in interest.The trust and the assuming insurer shall be subject to examination as determined by the commissioner.The trust described herein must remain in effect for as long as the assuming insurer shall have outstanding obligations due under the reinsurance agreements subject to the trust.

(iv) No later than February twenty-eight of each year the trustees of the trust shall report to the commissioner in writing setting forth the balance of the trust and listing the trust's investments at the preceding year end and shall certify the date of termination of the trust, if so planned, or certify that the trust shall not expire prior to the next following December thirty-first.

(E) Credit shall be allowed when the reinsurance is ceded to an assuming insurer not meeting the requirements of paragraph (A), (B), (C), or (D) but only with respect to the insurance of risks located in jurisdictions where such reinsurance is required by applicable law or regulation of that jurisdiction.

(F) If the assuming insurer is not licensed or accredited to transact insurance or reinsurance in the commonwealth, the credit permitted by paragraphs (C) and (D)

shall not be allowed unless the assuming insurer agrees in the reinsurance agreements:

(i) That in the event of the failure of the assuming insurer to perform its obligations under the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding insurer, shall submit to the jurisdiction of an alternative dispute resolution panel or any court of competent jurisdiction in any state of the United States, will comply with all requirements necessary to give such panel or court jurisdiction, and will abide by the final decision of such panel or court or of any appellate court in the event of an appeal of a decision by such panel or court; and (ii) To designate the commissioner or a designated attorney as its true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the ceding company.

This provision is not intended to conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes, if such an obligation is created in the agreement.

(2) A reduction from liability for the reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of subsection (1) shall be allowed in an amount not exceeding the related liabilities carried by the ceding insurer and such reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the ceding insurer, under a reinsurance contract with such assuming insurer as security for the payment of obligations thereunder, if such security is held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer or in the case of trust, held in a qualified United States financial

institution as defined in paragraph (B) of subsection (3).This security may be in the form of:

(A) Cash.

(B) Securities listed by the Securities Valuation Office of the National Association of Insurance Commissioners and qualifying as admitted assets.

(C) Clean, irrevocable, unconditional letters of credit, issued or confirmed by a qualified United States institution, as defined in paragraph (A) of subsection (3), no later than December thirty-first in respect of the year of which filing is being made, and in the possession of the ceding company on or before the filing date of its annual statement.

Letters of credit meeting applicable standards of issuer acceptability as for the dates of their issuance or confirmation shall, notwithstanding the issuing or confirming institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification or amendment, whichever first occurs.

(D) Any other form of security acceptable to the commissioner.

(3) (A) For purposes of paragraph (C) of subsection (2), a qualified United States financial institution means an institution that:

is organized or, in the case of a United States office of a foreign banking organization, licensed under the laws of the United States or any state thereof:(ii) is regulated, supervised and examined by United States federal or state authorities having regulatory authority over banks and trust companies; and (iii) has been determined by either the commissioner or the Securities Valuation Office of the National

Association of Insurance Commissioners to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the commissioner.

(B) A qualified United States financial institution means, for purposes of those provisions of this section specifying those institutions that are eligible to act as a fiduciary of a trust, an institution that:

(i) is organized, or, in the case of a United States branch or agency office of a foreign banking organization, licensed, under the laws of the United States or any state thereof and has been granted authority to operate with fiduciary powers; and (ii) is regulated, supervised and examined by federal or state authorities having regulatory authority over banks and trust companies.

(4) No credit shall be allowed to any ceding insurer for reinsurance unless, by the terms of a written reinsurance agreement, the reinsurance is payable by the assuming insurer on the basis of the liability of the ceding insurer under any policy or contract reinsured without diminution because of the insolvency of the ceding insurer.Any reinsurance agreement may provide that the liquidator or receiver or statutory successor of an insolvent ceding insurer shall give written notice of the pendency of a claim against the insolvent ceding insurer on the policy or contract reinsured within a reasonable time after such claim is filed in the insolvency proceeding and during the pendency of such claim the assuming insurer may investigate such claim and interpose, at its own expense, in the proceedings where such claim is to be adjudicated any defense or defenses which it may deem available to the ceding company or its liquidator or receiver or statutory successor.Subject to court approval, the expense thus incurred by the assuming insurer shall

be chargeable, against the insolvent ceding insurer as part of the expense of liquidation, to the extent of a proportionate share of the benefit which may accrue to the ceding insurer solely as a result of the defense undertaken by the assuming insurer.

(5) The commissioner may in accordance with the provisions of chapter thirty A, after notice and hearing, promulgate reasonable rules and regulations necessary to effectuate the provisions of this section, but such regulations shall not enlarge upon or extend the provisions of this section.

Similar authority:

Ark. Code Ann. § 23-62-204 & 23-62-303 (1987).
Colo. Rev. Stat. § 10-3-118 (1994 & Supp. 1995).
Conn. Gen. Stat. Ann. § 38a-85 & -86 (West 1992 & Supp. 1995).
Del. Code Ann. tit. 18, §§ 911 & 1105 (1989 & Supp. 1995)
Fla. Stat. Ann. § 624.610 (2) (West Supp. 1995).
Ga. Code Ann. § 33-7-14 (Supp. 1995).
Haw. Rev. Stat. §§ 431:4A-101 & -102 (1993 & Supp. 1995).
Idaho Code §§ 41-514 & -604 (1991 & Supp. 1995).
Ill. Stat. Ann. ch. 215, §§ 5/173.1 & .2 (1993 & supp. 1995).
Kan. Stat. Ann. § 40-212 (1993).
Ky. Rev. Stat. Ann. § 304.5-140 (Baldwin Supp. 1995).
La. Rev. Stat. Ann. §§ 941 - 941.3 (West 1995).
Me. Rev. Stat. Ann. tit. 24-A, §§ 731, 731-B & 922 (West 1990 & Supp. 1995).
Md. Ins. Code Ann. § 74 (2) (1994).
Mich. Stat. Ann. § 24.1725 (Callaghan Supp. 1995).
Minn. Stat. Ann. § 60A.092 & 60A.093 (West Supp. 1995).
Mich. Stat. Ann. § 24.1725 (Callaghan Supp. 1995).
Mont. Code Ann. §§ 33-2-1216 & 1217 (1995).
Neb. Rev. Stat. § 44-416.01 (Supp. 1995).
Nev. Rev. Stat. § 681A.110.2 (1991).
N.M. Stat. Ann. §§ 59A-7-11(B) & 59A-8-3 (1991).
N.Y. Ins. Law § 1308 (McKinney 1985 & Supp. 1995).
N.C. Gen. Stat. §§ 58-7-21 & 58-7-26 (1994).

N.D. Cent. Code §§ 26.1-31.2-.01 & 26.1-31.2-.02 (1995).
Okla. Stat. Ann. tit. 36, § 711 (West Supp. 1995).
Or. Rev. Stat. §§ 731.508 - .510, 733.040 & 733.140 (1993).
R.I. Gen. Laws § 27-1.1-1 & 27-1.1-2 (1994).
S.C. Code Ann. §§ 38-9-200 & -210 (Law. Co-op. Supp. 1995).
S.D. Codified Laws Ann. §§ 58-14-4, & 56-14-14 to -16 (1990).
Tenn. Code Ann. § 56-2-208 (1994).
Utah Code Ann. § 31A-17-404 (1994).
Vt. Stat. Ann. tit. 8, § 3634a(b) (Supp. 1995).
Va. Code Ann. § 38.2-1316.2-.4 (1994 & Supp. 1995).
W. Va. Code § 33-4-15a (Supp. 1995).
Wash. Rev. Stat. Ann. § 48.12.160 (West Supp. 1995).

III. Reinsurance affects the amount of reserves or surplus required.

Wyo. Stat. Ann. § 26-6-104 (1993).

(a) As to property, casualty and surety insurance the insurer shall maintain an unearned premium reserve on all policies in force.

(b) [T]he unearned premium reserve shall not be less than that computed, after deduction of applicable reinsurance in solvent insurers, as fifty percent (50%) of the gross premium for the current policy year plus one hundred percent (100%) of gross premiums paid in advance as to subsequent policy years.

Similar authority:

Ala. Code § 27-36-3 (b) (1986).
Alaska Stat. § 21.18.060(b) (Supp. 1995).
Ariz. Rev. Stat. Ann. § 20-506(B) 1990).
Ark. Code Ann. § 23-62-605(b)(1) (1987).
Del. Code Ann. tit. 18, § 1106(b) (1989).
Fla. Stat. Ann. § 625.051(2) (West 1984).
Ga. Code An. § 33-10-6(b) (Michie 1992).
Haw. Rev. Stat. § 431:5-301(b) (1993).

Idaho Code § 41-606(2) (1991).
Iowa Code Ann. § 515.47 (West 1988).
Ky. Rev. Stat. Ann. § 304.6-050(2) (Baldwin 1988).
La. Rev. Stat. Ann. § 891 (West 1995).
Me. Rev. Stat. Ann. tit. 24-A, § 923.2 (West 1990).
Md. Ins. Code Ann. § 78 (2) (1994).
Mont. Code Ann. § 33-2-512 (1995).
Nev. Rev. Stat. § 681B.060 (2) (1991).
N.Y. Ins. Law § 1305 (b) (McKinney 1985).
N.C. Gen. Stat. § 58-3-71 (b)-(d) & 58-3-81 (a) (1994).
Okla. Stat. Ann. tit. 36, § 1505.B (West 1990).
S.C. Code Ann. § 38-9-190 (Law. Co-op. Supp. 1995).
S.D. Codified Laws Ann. § 58-26-37 (1990).
Va. Code Ann. § 38.2-1316.6 (1994).
W. Va. Code § 33-7-6(b) (1992).
Wyo. Stat. § 26-6-105(b) (1993).

IV. Legislative finding re: regulation of insolvency process

Tenn. Code Ann. § 56-9-101(d)(6) & (7) (1994).

(d) The purpose of this chapter is the protection of the interests of insureds, claimants, creditors and the public generally, with minimum interference with the normal prerogatives of owners and managers of insurers, through:

. . .

(6) Regulation of the insurance business by the impact of the law relating to delinquency procedures and substantive rules on the entire insurance business; and

(7) Providing for a comprehensive scheme for the rehabilitation and liquidation of insurance companies and those subject to this chapter as part of the regulation of the business of insurance, insurance industry and insurers in this state.Proceedings in cases of insurer insolvency and delin-

quency are deemed an integral aspect of the business of insurance and are of vital public interest and concern.

Mo. Rev. Stat. § 375.1176.1 (1994).

. . . The liquidation of any insurer shall be considered to be the business of insurance for the purposes of application of any law of this state.

Similar authority:

Colo. Rev. Stat. § 10-3-501(3)(f)&(g) & 501(4) (1994).
Conn. Gen. Stat. Ann. § 38a-903(6)&(7) (West 1992 & Supp. 1995).
Ga. Code Ann. § 33-37-1(6)&(7) (Supp. 1995).
Haw. Rev. Stat. § 431:15-101(6) (1993).
Idaho Code § 41-3301(4)(f) (1991).
Iowa Code Ann. § 507c.1(4)(f)& (g) (West 1988 & Supp. 1995).
Ky. Rev. Stat. Ann. § 304.33-010(4)(f)& (g) (Baldwin Supp. 1995)
Mich. Stat. Ann. § 24.18101 (3)(f) 1994).
Minn. Stat. Ann. § 60B.01 (4)(f) (West 1986).
Miss. Code Ann. § 83-24-3 (f) & (g) (1991).
Mont. Code Ann. § 33-2-1302 (3)(f) (1995).
Neb. Rev. Stat. § 44-4801 (6)&(7) (1993).
N.H. Rev. Stat. Ann. § 402-C:1 (IV)(f) (1983).
N.C. Gen. Stat. § 58-30-1 (c)(6) (1994).
N.D. Cent. Code § 26.1-06.1-01.3 (f)&(g) (1995).
Ohio Rev. Code Ann. § 3903.02 (D)(6) (Anderson 1989).
40 Pa. Cons. Stat. Ann. § 221.1 (c)(vi) (1992).
Wis. Stat. Ann. § 645.01(4)(f) (West 1995).

V. Action for appointment of receiver to be initiated by commissioner.

Mo. Rev. Stat. § 375.1154.1 (1994).

No delinquency proceeding shall be commenced after August 28, 1991, by anyone other than the director [of the Department of Insurance] and no court shall have jurisdiction to

entertain, hear or determine any proceedings commenced by any other person.

Mass. Gen. L. ch. 175, § 180C (Supp. 1995).

If the commissioner deems that a domestic company which is the subject of a rehabilitation proceeding under section one hundred and eighty B, or which may properly be the subject of such a proceeding for any cause referred to in said section, hereinafter referred to as the company, is insolvent and that it should be liquidated, he shall make application to the court for a decree authorizing him to liquidate the company.

Similar authority:

Ala. Code § 27-32-4 (1986).
Alaska Stat. § 21.78.020(a) (1993).
Ariz. Rev, Stat. Ann. § 20-613(A) (Supp. 1995).
Ark. Code Ann. § 23-68-104 (1987).
Colo. Rev. Stat. § 10-3-504(1) (1994).
Conn. Gen. Stat. Ann. § 38a-906(a) (West 1992).
Dela. Code Ann. tit. 18, § 5903 (1989).
Fla. Stat. Ann. § 631.031 (West Supp. 1995).
Ga. Code Ann. § 33-37-4(a) (Michie Supp. 1995).
Idaho Code § 41-3304(1) (1991).
Ind. Code Ann. §§ 27-2-4-1 & 27-9-1-3(a) (Burns 1994).
Iowa Code Ann. § 507C.4(1) (West 1988).
Kan. Stat. Ann. § 40-3608(a) (1993).
La. Rev. Stat. Ann. § 742 (West 1995).
Me. Rev. Stat. Ann. tit. 24-A, § 4354.1 & 4360 (West Supp. 1995).
Md. Ann. Code art. 48A, § 134 (1994).
Mich. Stat. Ann. § 24-18104 (1) (Callaghan 1994).
Miss. Code Ann. § 83-24-9 (1) (1991).
Mont. Code Ann. § 33-2-1305 (1) (1995).
Neb. Rev. Stat. § 44-4804 (1) (1993).
N.J. Stat. Ann. § 17:30C-4 (a) (West 1994).
N.M. Stat. Ann. § 59A-41-34 (A) (1991).

N.Y. Ins. Law § 7417 (McKinney 1985).
N.C. Gen. Stat. § 58-30-15 (a) (1994).
N.M. Cent. Code § 26.1-06.1-04.1 (1995).
Ohio Rev. Code Ann. § 3903.04 (A) (Anderson 1989).
Okla. Stat. Ann. tit. 36, § 1903 (West 1990).
Or. Rev. Stat. § 734.130 (1) (1993).
40 Pa. Cons. Stat. Ann. § 221.20 (a) (1993).
R.I. Gen. Laws § 27-14.3-4 (a) (1994).
S.D. Codified Laws Ann. § 58-29B-4 (1990).
Tenn. Code Ann. § 56-9-104(a) (1994).
Wash. Rev. Stat. Ann. § 48.31.190(2) (West Supp. 1995).
Wis. Stat. Ann. § 645.04(1) (West 1995).
Wyo. Stat. § 26-28-103 (1993).

VI. Commissioner and limited number of creditors can petition for liquidation.

Utah Code Ann. § 31A-27-103

(1) Except as provided in Subsection (2), no delinquency proceeding may be commenced under this chapter by anyone other than the Utah commissioner.

(2) (a) Three or more judgment creditors holding unrelated judgments against an insurer, which judgments aggregate more than $5,000 in excess of any security held by those creditors may commence proceedings against the insurer under the conditions and in the manner prescribed in this subsection, by serving notice upon the commissioner and the insurer of an intention to file a petition for liquidation under Section 31A-27-307 or 31A-27-402.Each of the judgments:

(i) shall have been rendered against the insurer by a Utah court having jurisdiction over the subject matter and the insurer;

(ii) shall have been entered more than 60 days before the service of notice under Subsection (2);

(iii) may not have been satisfied in full;

(iv) may not be the subject of a valid contract between the insurer and any judgment creditor for payment of this judgment, unless that contract has been breached by the insurer;

(v) may not be a judgment assigned in order to institute proceedings under this subsection; and

(vi) may not be a judgment on which an appeal or review is pending or may yet be brought.

(b) If any one of the judgments in favor of a petitioning creditor remains unpaid for 30 days after service of the notice under Subsection (2), and the commissioner has not then filed a petition for liquidation, the creditor may file a verified petition for liquidation of the insurer in the manner prescribed by Section 31A-27-307 or 31A-27-402, alleging the conditions stated in this subsection.The commissioner shall be served and joined in the action.

Similar authority:

Haw. Rev. Stat. § 431:15-104(a)&(b) (1993).
Ill. Rev. Stat. ch. 215, para. 5 § 201 (1993).
Ky. Rev. Stat. Ann. § 304.33-040(1)&(2) Baldwin Supp. 1995).
Minn. Stat. Ann. § 60B.04 (1)& (2) (West 1986).
Nev. Rev. Stat. §§ 696B.250 & 696B.350 (1991).
N.H. Rev. Stat. Ann. § 402-C:4 (I)&(II) (1983).
S.C. Code Ann. § 38-27-60(a) (Law. Co-op. Supp. 1995).
Utah Code Ann. § 31A-27-103(1) & (2) (1994).
Va. Code Ann. § 38.2-1504 (1994).

VII. Liquidation under chapter the sole and exclusive remedy.

Mo. Rev. Stat. § 375.1154.2 (1994).

No court of this state shall have jurisdiction to entertain, hear or determine any complaint praying for the dissolution, liquidation, rehabilitation, sequestration, supervision, conservation or receivership of any insurer; or praying for an injunction or restraining order or other relief preliminary to, incidental to or relating to such proceedings other than in accordance with sections 375.1150 to 375.1246 [Insurers Supervision, Rehabilitation and Liquidation Act.]

Similar authority:

Ala. Code § 27-32-3 (1986).
Alaska stat. § 21.78.010(b) (1993).
Ariz. Rev. Stat. Ann. § 20-612(c) (Supp. 1995).
Ark. Code Ann. § 23-68-103(c) (1987).
Conn. Gen. Stat. Ann. § 38a-906(b) (West 1992).
Dela. Code Ann. tit. 18, § 5902(d) (1989).
Fla. Stat. Ann. § 631.021(3) (West Supp. 1995).
Ga. Code Ann. § 33-37-4 (Michie Supp. 1995).
Haw. Rev. Stat. 431:15-104(c) (1993).
Idaho Code § 41-3304(2) (1991).
Ind. Code Ann. § 27-9-1-3(b) (1994).
Iowa Code Ann. § 507C.4(2) (West 1994).
Kan. Stat. Ann. § 40-3608(6) (1993).
Ky. Rev. Stat. § 304.33-040(3) (Baldwin Supp. 1995).
Me. Rev. Stat. Ann. tit. 24-A, § 4354.4 (West 1990).
Md. Ann. Code art. 48A, § 133 (c) (1994).
Mich. Stat. Ann. § 24-18104 (2) (Callaghan 1994).
Minn. Stat. Ann. § 60B.04 (3) (West 1986).
Miss. Code Ann. § 83-24-9 (2) (1991).
Mont. Code Ann. § 33-2-1305 (2) (1995).
Neb. Rev. Stat. § 44-4804 (2) (1993).

Nev. Rev. Stat. § 696B.190 (4) (1991).
N.H. Rev. Stat. Ann. § 402-C:4 (III) (1983).
N.J. Stat. Ann. § 17:30C-3 (West 1994).
N.C. Gen. Stat. § 58-30-15 (b) (1994).
N.D. Cent. Code § 26.1-06.1-04.2 (1995).
Ohio Rev. Code Ann.§ 3903.04 (B) (Anderson 1989).
Okla. Stat. Ann. tit. 36, § 1902.C (West 1990).
Or. Rev. Stat. § 734.120 (1) (1993).
40 Pa. Cons. Stat. Ann. § 221.4 (a) (1993).
R.I. Gen. Laws § 27-14.3-4 (a)&(b) (1994).
S.C. Code Ann. § 38-27-60(b) (Law. Co-op. Supp. 1995).
S.D. Codified Laws Ann. § 58-29B-4 (1990).
Tenn. Code Ann. § 56-9-104(b) (1994).
Utah Code Ann. § 31A-27-103(3) (1994).
Vt. Stat. Ann. § 7032 (1993).
W. Va. Code § 33-10-2 (1992).
Wis. Stat. Ann. § 645.04(3) (West 1995).
Wyo. Stat. § 26-28-102(d) (1993).

VIII. Personal jurisdiction over reinsurer.

Mo. Rev. Stat. § 375.1154 (1994).

4. In addition to other grounds for jurisdiction provided by the law of this state, a court having jurisdiction of the subject matter has jurisdiction over a person served pursuant to applicable laws or supreme court rule in an action brought by the receiver of a domestic insurer or an alien insurer domiciled in this state:

. . .

(b) I f the person is a reinsurer who has at any time entered into a contract of reinsurance with an insurer against which a delinquency proceeding has been instituted, or is an agent or broker of or for the reinsurer, in any action on or incident to the reinsurance contract[.]

Similar authority:

Alaska Stat. § 21.78.020(d)(2) (1993).
Colo. Rev. Stat. Ann. § 10-3-504(3)(b) (1994).
Conn. Gen. Stat. Ann. § 38a-906(c)(2) (1992).
Ga. Code Ann. § 33-37-4(c)(2) Michie Supp. 1995).
Haw. Rev. Stat. § 431:15-104(e)(2) (1993).
Idaho Code § 41-3304(3)(b) (1991).
Ind. Stat. Ann. § 27-9-1-3(c)(2) (Burns 1994).
Iowa Code Ann. § 507C.4(3)(b) (West Supp. 1995).
Kan. Stat. Ann. § 40-3608(c)(2) (1993).
Ky. Rev. Stat. § 304.33-040(5)(b) (Baldwin Supp. 1995).
Me. Rev. Stat. Ann. tit. 24-A, § 4355.1.B (West Supp. 1995).
Md. Ann. Code art. 48A, § 133 (e)(2) (1994).
Mich. Stat. Ann. § 24.18104 (3)(b) (Callaghan 1994).
Minn. Stat. Ann. § 60B.04 (5)(b) (West 1986).
Miss. Code Ann. § 83-24-9 (3)(b) (1991).
Mont. Code Ann. § 33-2-1306 (2) (1995).
Neb. Rev. Stat. § 44-4804 (3)(b) (1993).
Nev. Rev. Stat. § 696B.200 (1)(b) (1991).
N.H. Rev. Stat. Ann. § 402-C:4 (V)(b) (Supp. 1994).
N.C. Gen. Stat. § 58-30-15 (c)(2) (1994).
N.D. Cent. Code § 26.1-06.1-04.3 (b) (1995).
Ohio Rev. Code Ann. § 3903.04 (C)(2) (Anderson 1989).
40 Pa. Cons. Stat. Ann. § 221.4 (b)(ii) (1993).
R.I. Gen. Laws § 27-14.3-4 (c)(2) (1994).
S.C. Code Ann. § 38-27-60(d)(2) (Law. Co-op. Supp. 1995).
S.D. Codified Laws Ann. § 58-29B-6(2) (Supp. 1995).
Tenn. Code Ann. § 56-9-104(c) (1994).
Utah Code Ann. § 31A-27-103(5)(b) (1994).

IX. Grounds for liquidation.

Mass. Gen. L. ch. 175, § 6 (1987).

If [the commissioner of insurance] is satisfied that any domestic company is insolvent or in an unsound financial

condition, or that its business policies or methods are unsound or improper, or that its condition or management is such as to render its further transaction of business hazardous to the public or to its policyholders or creditors, or that it is transacting business fraudulently or that its officers or agents have refused to submit to an examination under section four or seventy-three, or that it has attempted or is attempting to compromise with its creditors on the ground that it is unable to pay its claims in full, or that, when its assets are less than its liabilities, inclusive of unearned premium but exclusive of capital, if any, it has attempted or is attempting to the disadvantage of policyholders who have suffered losses to prefer, or has preferred, by reinsurance, policyholders who have sustained no losses, he shall, except as provided in section one hundred and eighty B or one hundred and eighty C, or, if he is satisfied that any domestic insurer has exceeded its powers or has violated any provision of law, or that the amount of its funds, insurance in force or premiums or number of risks is deficient or that its guarantee capital under section ninety B or ninety-three or its guarantee fund under section ninety C is impaired, as set forth in sections twenty-three, seventy-four, ninety-three D and one hundred and sixteen, he may, apply to the supreme judicial court for an injunction restraining it in whole or in part from further proceeding with its business and for the appointment of a receiver.

Mo. Rev. Stat. § 375.1175 (1994).

The director may petition the court for an order directing him to liquidate a domestic insurer or an alien insurer domiciled in this state on the basis:

(1) Of any ground for an order of rehabilitation as specified in section 375.1165, whether or not there has been a prior order directing the rehabilitation of the insurer;

(2) That the insurer is insolvent;

(3) That the insurer is in such condition that the further transaction of business would be hazardous, financially or otherwise, to its policyholders, its creditors or the public;

(4) That the insurer is found to be in such condition after examination that it could not meet the requirements for incorporation and authorization specified in the law under which it was incorporated or is doing business; or

(5) That the insurer has ceased to transact the business of insurance for a period of one year.

Mo. Rev. Stat. § 375.1165 (1994).

The director may apply by petition to the court for an order authorizing him to rehabilitate a domestic insurer or an alien insurer domiciled in this state on any one or more of the following grounds:

(1) The insurer is in such condition that the further transaction of business would be hazardous financially to its policyholders, creditors or the public;

(2) There is reasonable cause to believe that there has been embezzlement from the insurer, wrongful sequestration or diversion of the insurer's assets, forgery or fraud affecting the insurer, or other illegal conduct in, by, or with respect to the insurer that if established would endanger assets in an amount threatening the solvency of the insurer;

(3) The insurer has failed to remove any person who in fact has executive authority in the insurer, whether an officer, manager, general agent, employee, or other person, if the person has been found after notice and hearing by the director to be dishonest or untrustworthy in a way affecting the insurer's business;

(4) Control of the insurer, whether by stock ownership or otherwise, and whether direct or indirect, is in a person or persons found after notice and a hearing to be untrustworthy;

(5) Any person who in fact has executive authority in the insurer, whether an officer, manager, general agent, employee, or other person, has refused to be examined under oath by the director concerning its affairs, whether in this state or elsewhere; and after reasonable notice of this fact, the insurer has failed promptly and effectively to terminate the employment and status of the person and all his influence on management;

(6) After request by the director pursuant to section 374.190, RSMo, or pursuant to the provisions of sections 375.1150 to 375.1246, the insurer has failed to promptly make available for examination any of its own property, books, accounts, documents or other records, or those of any subsidiary or related company within the control of the insurer, or those of any person having executive authority in the insurer so far as they pertain to the insurer;

(7) Without first obtaining the written consent of the director, the insurer has transferred, or attempted to transfer in a manner contrary to section 375.241 or sections 382.040 to 382.060, RSMo, substantially its entire property or business, or has entered into any transaction the effect of which is to merge, consolidate or reinsure substantially its entire property or business in or with the property or business of another;

(8) The insurer or its property has been or is the subject of an application for the appointment of a receiver, trustee, custodian, conservator or sequestrator or similar fiduciary of the insurer or its property otherwise than as provided under the insurance laws of this state, or such appointment has been made or is imminent;

(9) Within the three previous years the insurer has willfully violated its charter or articles of incorporation, its bylaws, any insurance law of this state, or any valid order of the director under section 375.1160 or 375.1162;

(10) The insurer has failed to pay within sixty days after due date any obligation to any state or subdivision thereof of any judgment entered in any state, if the court in which such judgment was entered had jurisdiction over such subject matter except that such nonpayment shall not be a ground until sixty days after any good faith effort by the insurer to contest the obligation has been terminated, whether it is before the director or in the courts, or the insurer has systematically attempted to compromise or renegotiate previously agreed settlements with its creditors on the ground that it is financially unable to pay its obligation in full;

(11) The insurer has failed to file its annual report or other financial report required by law within the time allowed by law;

(12) The board of directors or the holders of a majority of the shares entitled to vote, or a majority of those individuals entitled to the control of the insurer request or consent to rehabilitation under sections 375.1150 to 375.1246.

Similar authority:

Ala. Code § 27-32-7 (1986).
Alaska Stat. § 21.78.050 (1993).
Ariz. Rev. Stat. Ann. § 20-616 (1990).
Ark. Code Ann. § 23-68-107 (1987).
Colo. Rev. Stat. Ann. §§ 10-3-516 & 10-3-511 (Michie 1994).
Conn. Gen. Stat. Ann. §§ 38a-919 (West 1992).
Del. Code Ann. tit. 18, § 5906 (1989).
Fla. Stat. Ann. § 631.061 (West Supp. 1995).
Ga. Code Ann. §§ 33-37-16 & 33-37-11 (Supp. 1995).
Haw. Rev. Stat. §§ 431:15-306 & 431:15-301 (1993).
Idaho Code §§ 41-3317 & 41-3312 (1991).
Ill. Rev. Stat. ch. 215, para. 5, § 188 (Supp. 1995).
Ind. Stat. Ann. §§ 27-9-3-6 & 27-9-3-1 (Burns 1994).
Iowa Code Ann. §§ 507C.17 & 507C.12 (West 1988).
Kan. Stat. Ann. § 40-3621 & 40-3616 (1993).

Ky. Rev. Stat. § 304.33-190 (Baldwin Supp. 1995).
Me. Rev. Stat. Ann. tit. 24-A, § 4357.2 (West 1990).
Md. Ann. Code art. 48A, §§ 137 & 136 (1994)
Mich. Stat. Ann. §§ 24.18117 & 24.18112 (Callaghan 1994).
Minn. Stat. Ann §§ 60B.20 & 60B.15 (West Supp. 1995).
Miss. Code Ann. §§ 83-24-33 & 83-24-23 (1991).
Mont. Code Ann. §§ 33-2-1341 & 33-2-1331 (1995).
Neb. Rev. Stat. §§ 44-4817 & 44-4812 (1993).
Nev. Rev. Stat. § 696B.220 (1991).
N.H. Rev. Stat. Ann. §§ 402-C:20 & 402-C:15 (1983).
N.J. Stat. Ann. § 17:30C-8 (West 1994).
N.M. Stat. Ann. § 59A-41-28 (1991).
N.Y. Ins. Law § 7404 & 7402 (McKinney 1985 & Supp. 1995).
N.C. Gen. Stat. §§ 58-30-100 & 58-30-75 (1994).
N.D. Cent. Code § 26.1-06.1-16 & 26.1-06.1-11 (1995).
Ohio Rev. Code Ann. §§ 3903.17 & 3903.12 (Anderson 1989).
Okla. Stat. Ann. tit. 36, §§ 1906 & 1905 (West 1990).
Or. Rev. Stat. §§ 734.170 & 734.150 (1993).
40 Pa. Cons. Stat. Ann. § 221.19 & 221.14 (1993).
R.I. Gen. Laws §§ 27-14.3-21 & 27-14.3-16 (1994).
Utah Code Ann. § 31A-27-307 (1994).
Va. Code § 38.2-1503 (1994).
W. Va. Code § 33-10-6 (1992).
Wis. Stat. Ann. § 645.41 (West 1995).
Wyo. Stat. § 26-28-105 & 26-28-106 (1993).

X. Commissioner shall be appointed receiver/liquidator.

Mass. Gen. L. ch. 175, § 180C (Supp. 1995).

If the commissioner deems that a domestic company which is the subject of a rehabilitation proceeding under section one hundred and eighty B, or which may properly be the subject of such a proceeding for any cause referred to in said section, hereinafter referred to as the company, is insolvent and that it should be liquidated, he shall make application to the court for a decree authorizing him to liquidate the company. The court,

after notice to all known creditors and stockholders of the company and a full hearing, may order its liquidation and appoint the commissioner permanent receiver thereof.

Mo. Rev. Stat. § 375.1176 (1994).

.1. An order to liquidate the business of a domestic insurer shall appoint the director and his successors as liquidator and shall direct the liquidator forthwith to take immediate possession of the assets of the insurer and to administer them subject to the supervision of the court until the liquidator is discharged by the court.

Similar authority:

Ala. Code § 27-32-15(a) (1986).
Alaska Stat. § 21.78.130(a) (Supp. 1995).
Ariz. Rev. Stat. Ann. § 20-624 (1990).
Ark. Code Ann. § 23-68-113(d) (1987).
Colo. Rev. Stat. Ann. § 10-3-517(1) (Michie 1994).
Conn. Gen. Stat. Ann. § 38a-920(a) (West 1992).
Del. Code Ann. tit. 18, § 5913 (1989).
Fla. Stat. Ann. § 631.141 (West 1989).
Ga. Code Ann. § 33-37-17(a) (Supp. 1995).
Haw. Rev. Stat. § 431:15-307(a) (1993).
Idaho Code §§ 41-3317 & 41-3318(1) (1991).
Ill. Rev. Stat. ch. 215, para. 5, § 190(5) (Supp. 1995).
Ind. Stat. Ann. § 27-9-3-7(a)(1) (Burns 1994).
Iowa Code Ann. § 507C.18(1) (West Supp. 1995).
Kan. Stat. Ann. § 40-3622 (1993).
Ky. Rev. Stat. § 304.33-200(1) (Baldwin Supp. 1995).
La. Rev. Stat. Ann. § 735.A (West 1995).
Me. Rev. Stat. Ann. tit. 24-A, § 4364.1 (West 1990).
Md. Ann. Code Art. 48A, § 141 (a)(1) (1994).
Mich. Stat. Ann. § 24.18118 (1) (Callaghan Supp. 1995).
Minn. Stat. Ann. § 60B.21 (1) (West 1986).
Miss. Code Ann. § 83-24-35 (1) (1991).

Mont. Code Ann. § 33-2-1342 (1) (1995).
Neb. Rev. Stat. § 44-4814 (1) (1993).
Nev. Rev. Stat. § 696B.290 (1) (1991).
Nev. Rev. Stat. § 696B.300 (1) (1991).
N.H. Rev. Stat. Ann. § 402-C:21 (I) (1983).
N.J. Stat. Ann. § 17:30C-15(a) (West 1994).
N.M. Stat. Ann. §§ 59A-41-18 (A) & 59A-41-30 (A) (1991).
N.Y. Ins. Law §§ 7405 & 7409 (b) (McKinney 1985).
N.C. Gen. Stat. § 58-30-105 (a) (1994).
N.D. Cent. Code § 26.1.06.1-17.1 (1995).
Ohio Rev. Code Ann. § 3903.18 (A) (Anderson 1989).
Okla. Stat. Ann. tit. 36, § 1914.A (West 1990).
Or. Rev. Stat. § 734.210 (1) (1993).
40 Pa. Cons. Stat. Ann. § 221.20(c) (1993).
R.I. Gen. Laws § 27-14.3-22 (a) (1994).
S.C. Code Ann. § 38-27-370(A) (Law. Co-op. Supp. 1995).
Tenn. Code Ann. § 56-9-307(a) (1994).
Tex. Ins. Code § 21.28(2)(a) (West Supp. 1995).
Utah Code Ann. § 31A-27-307 (1994).
Vt. Stat. Ann. tit. 8, § 7057 (1994).
Wash. Rev. Code Ann. § 48.99.020(1) (West Supp. 1995).
W. Va. Code § 33-10-14 (1992).
Wis. Stat. Ann. § 645.42 (1) (West 1995).
Wyo. Stat. § 26-28-112(a) (1993).

Contra Va. Code Ann. § 38.2-1508 (1994)(when Insurance Commission is appointed receiver it acts without supervision of court; if someone other than Commission is appointed it acts pursuant to a court ordered plan.)

XI. Liquidator to take control of property of insurer and begin to collect the assets

Mo. Rev. Stat. § 375.1146 (1994)

.1. An order to liquidate the business of a domestic insurer shall appoint the director and his successors as liquidator and

shall direct the liquidator forthwith to take immediate possession of the assets of the insurer and to administer them subject to the supervision of the court until the liquidator is discharged by the court. . . . The liquidator shall be vested by operation of law with the title to all of the property, contracts and rights of action, and all of the books and records of the insurer ordered liquidated, as of the entry of the order of liquidation.

Mo. Rev. Stat. § 375.1182 (1994)

.1. The liquidator shall have the power:

. . .

(6) To collect all debts and moneys due and claims belonging to the insurer, wherever located[.]

Mass. Gen. L. ch. 175, § 180C (1987).

. . .

. . .

Upon the entry of a decree ordering liquidation of a company the receiver shall proceed forthwith to liquidate the business thereof[.]

Ala. Code §§ 27-32-12(a) & 14(b) (1986).
Alaska Stat. §§ 21.78.100(a) & 130(b)(1993 & Supp. 1995).
Ariz. Rev. Stat. Ann. §§ 20-621(a) & -624(B) (1990).
Ark. Code Ann. §§ 23-68-111(a)(1) & -113(2) (1987).
Colo. Rev. Stat. Ann. § 10-3-517(1) (Michie 1994).
Conn. Gen. Stat. Ann. § 38a-920(a) (West 1992).
Del. Code Ann. tit. 18, §§ 5911(a) & 5913(b) (1989).
Fla. Stat. Ann. §§ 631.111, .141(2) & .152(2) West 1984 & Supp. 1995).
Ga. Code Ann. § 33-37-20(8) (Supp. 1995).
Haw. Rev. Stat. § 431:15-307(a) & -310(a)(6) (1993).
Idaho Code §§ 41-3318(1) & -3319(1)(f) (1991).
Ill. Rev. Stat. ch. 215, para. 5, § 190(5) & 191 (1993 & Supp. 1995).
Ind. Stat. Ann. § 27-9-4-7(b) & -9(b)(6) (Burns 1994).

Iowa Code Ann. § 507C.18(1) & .21(f) (West 1988).
Kan. Stat. Ann. § 40-3622(a) & .3625(a)(8) (1993).
Ky. Rev. Stat. § 304.33-200 & 240(6) (Baldwin Supp. 1995).
La. Rev. Stat. Ann. § 737.A (West 1995).
Me. Rev. Stat. Ann. tit. 24-A, § 4364.2 (West 1990).
Md. Code Ann. art. 48A, §§ 141 (a)(2) & (b) & 142 (1994).
Mich. Stat. Ann. § 24.18118 (1) & .18121 (f) (Callaghan Supp. 1995).
Minn. Stat. Ann. § 60B.21 (1) & .25(6) (West 1986 & Supp. 1995).
Miss. Code Ann. § 83-24-35 (1) & -41(h) (1991).
Mont. Code Ann. § 33-2-1342 (1) & -1345(1)(f) (1995).
Neb. Rev. Stat. § 44-4818 (1) & -4821(1)(h) (1993).
Nev. Rev. Stat. § 696B.290 (2)&(5) & .300(2) (1991).
N.H. Rev. Stat. Ann. § 402-C:21(I) & -C:25(VI) (1983).
N.J. Stat. Ann. § 17:30C-15(a)&(b) (West 1994).
N.M. Stat. Ann. § 59A-41-18(B)&(C) & -30(A)&(B) (1991).
N.Y. Ins. Law § 7405(a)&(b) & 7409(a)&(b) (McKinney 1985).
N.C. Gen. Stat. § 58-30-105(a) & -120(6) (1994).
N.D. Cent. Code § 26.1-06.1-17.1 & -20.1(h) (1995).
Ohio Rev. Code Ann. § 3903.18(A) & 3903.21(A)(6) (Anderson 1989).
Okla. Stat. Ann. tit. 36, § 1911.A & 1914.A, .B & .E (West 1990).
Or. Rev. Stat. § 734.180(1), .210(1) & .220 (1993).
40 Pa. Cons. Stat. Ann. § 221.20(c) & .23(6) (1993).
R.I. Gen. Laws § 27.14.3-22(a) & -25(8) (1994).
S.C. Code Ann. §§ 38-27-370(A) & -400(6) (Law. Co-op. Supp. 1995).
S.D. Codified Laws Ann. § 58-29B-49(6) (Supp. 1995).
Tenn. Code Ann. §§ 56-9-307(a) & -310(8) (1994).
Utah Code Ann. §§ 31A-27-310 & -314(6) (1994).
Vt. Stat. Ann. tit. 8, § 7060 (9).
Wash. Rev. Code Ann. § 48.99.020(1) (West Supp. 1995).
W. Va. Code § 33-10-11 (1992).
Wis. Stat. Ann. §§ 645.42(1) & 645.46(6) (West 1995).
Wyo. Stat. §§ 26-28-110 & -112(a)&(b) (1993).

XII. Liquidator may bring actions in other jurisdictions to forestall garnishment or attachment.

Mo. Rev. Stat. § 375.1182 (1994)

.1. The liquidator shall have the power:

. . .

(6) To collect all debts and moneys due and claims belonging to the insurer, wherever located, and for this purpose:

(a) to institute timely actions in other jurisdictions to forestall garnishment and attachment proceedings against such debt[.]

Similar authority:

Colo. Rev. Stat. Ann. § 10-3-520 (1)(h)(II) (Michie 1994).
Ga. Code Ann. § 33-37-20(8)(A) (Supp. 1995).
Haw. Rev. Stat. § 431:15-310(6)(A) (1993).
Idaho Code §§ 41-3321(1)(f)1 (1991).
Ind. Stat. Ann. § 27-9-3-9(b)(6)(A) (Burns 1994).
Iowa Code Ann. § 507C.21(f)(1) (West 1988).
Kan. Stat. Ann. § 40-3625(a)(8)(1) (1993).
Ky. Rev. Stat. § 304.33-240(6)) (Baldwin Supp. 1995).
Mich. Stat. Ann. § 24.18121 (f)(1) (Callaghan Supp. 1995).
Minn. Stat. Ann. § 60B.25(6) (West Supp. 1995).
Miss. Code Ann. § 83-24-41 (h)(1) (1991).
Mont. Code Ann. § 33-2-1345 (1)(f)(i) (1995).
Neb. Rev. Stat. § 44-4821 (1)(h)(i) (1993).
N.H. rev. Stat. Ann. § 402-C:25 (VI) (1983).
N.C. Gen. Stat. § 58-30-120 (6)(1) (1994).
N.D. Cent. Code § 26.1-06.1-20.1 (h)(1) (1995).
Ohio Rev. Code Ann. § 3903.21 (A)(6)(a) (Anderson 1989).
40 Pa. Cons. Stat. Ann. § 221.23 (6) (1993).
R.I. Gen. Laws § 27-14.3-25 (8)(i) (1994).
S.C. Code Ann. § 38-27-400(6)(a) (Law. Co-op. Supp. 1995).

S.D. Codified Laws Ann. § 58-29B-49(6) (Supp. 1995).
Tenn. Code Ann. § 56-9-310(8) (1994).
Utah Code Ann. § 31A-27-314 (6)(a) (1994).
Vt. Stat. Ann. tit. 8, § 7060(9) (1993).
Wis. Stat. Ann. § 645.46(6) (West 1995).

XIII. Money can be borrowed by liquidator on pledge of assets of the estate.

Mo. Rev. Stat. § 375.1182 (1994)

.1. The liquidator shall have the power:

. . .

(10) To borrow money on the security of the insurer's assets or without security and to execute and deliver all documents necessary to that transaction for the purpose of facilitating the liquidation.Any such funds borrowed may be repaid as an administrative expense and have priority over any other claims in class 1 under the priority of distribution[.]

Similar authority:

Ala. Code § 27-32-25 (1986).
Alaska Stat. § 21.78.230(a) (1993).
Ariz. Rev. Stat. Ann. § 20-634 (1990).
Ark. Code Ann. § 23-68-123(a) (1987).
Colo. Rev. Stat. Ann. § 10-3-520(l) (Michie 1994).
Conn. Gen. Stat. Ann. § 38a-923(10) (West Supp. 1995).
Del. Code Ann. tit. 18, § 5923 (1989).
Ga. Code Ann. § 33-37-20(a)(12) (Supp. 1995).
Haw. Rev. Stat. § 431:15-310(a)(10) (1993).
Idaho Code § 41-3321(1)(j) (1991).
Ill. Rev. Stat. ch. 215, para. 5, § 195 (1993).
Ind. Stat. Ann. § 27-9-3-9(b)(10) (Burns 1994).
Iowa Code Ann. § 507C.21(1)(j) (West Supp. 1995).
Kan. Stat. Ann. § 40-3625(a)(12) (1993).
Ky. Rev. Stat. § 304.33-240(11) (Baldwin Supp. 1995).

Me. Rev. Stat. Ann. tit. 24-A, § 4373 (West 1990).
Md. Ann. Code art. 48A, § 155 (1994).
Mich. Stat. Ann. § 24.18121 (j) (Callaghan Supp. 1995).
Minn. Stat. Ann. § 60B.25(10) (West Supp. 1995).
Miss. Code Ann. § 83-24-41 (l) (1991).
Mont. Code Ann. § 33-2-1345 (j) (1995).
Neb. Rev. Stat. § 44-4821 (1)(l) (1993).
Nev. Rev. Stat. § 696B.380 (1991).
N.H. Rev. Stat. Ann. § 402-C:25 (X) (1983).
N.J. Stat. Ann. § 17:30C-24 (West 1994).
N.M. Stat. Ann. § 59A-41-39 (1991).
N.Y. Ins. Law § 7429 (McKinney 1985).
N.C. Gen. Stat. § 58-30-120 (10) (1994).
N.D. Cent. Code § 26.1-06.1-20.1 (l) (1995).
Ohio Rev. Code Ann. § 3903.21 (A)(10) (Anderson 1989).
Okla. Stat. Ann. tit. 36, § 1924 (West 1990).
40 Pa. Cons. Stat. Ann. § 221.23 (10) (1993).
R.I. Gen. Laws § 27-14.3-25 (12) (1994).
S.C. Code Ann. § 38-27-400(10) (Law. Co-op. Supp. 1995).
S.D. Codified Laws Ann. § 58-29B-49(10) (Supp. 1995).
Tenn. Code Ann. § 56-9-310(12) (1994).
Utah Code Ann. § 31A-27-314 (10 (1994).
Vt. Stat. Ann. tit. 8, § 7060(11) (1993).
Va. Code Ann. § 38.2-1511 (1994).
W. Va. Code § 33-10-24 (1992).
Wis. Stat. Ann. § 645.46(10) (West 1995).
Wyo. Stat. § 26-28-122 (1993).

XIV. Liquidator can continue to prosecute or initiate any action by or against the insurer.

Mo. Rev. Stat. § 375.1182 (1994)

.1. The liquidator shall have the power:

. . .

(12) To continue to prosecute and to institute in the name of the insurer or in his own name any and all suits and other legal proceedings, in this state or elsewhere, and, with the approval of the supervising court, to abandon the prosecution of claims that he deems unprofitable to pursue further[.]

Similar authority:

Colo. Rev. Stat. Ann. § 10-3-520(n) (Michie 1994).
Conn. Gen. Stat. Ann. § 38a-923(12) (West Supp. 1995).
Ga. Code Ann. § 33-37-20(a)(14) (Supp. 1995).
Haw. Rev. Stat. § 431:15-310(a)(12) (1993).
Idaho Code § 41-3321(1)(l) (1991).
Ind. Stat. Ann. § 27-9-3-9(b)(12) (Burns 1994).
Iowa Code Ann. § 507C.21(l) (West 1988).
Kan. Stat. Ann. § 40-3625(14) (1993).
Ky. Rev. Stat. § 304.33-240(13) (Baldwin Supp. 1995).
Mich. Stat. Ann. § 24.18121 (l) (Callaghan Supp. 1995).
Minn. Stat. Ann. § 60B.25(12)(West Supp. 1995).
Miss. Code § 83-24-41 (n) (1991).
Mont. Code Ann. § 33-2-1345 (l) (1995).
Neb. Rev. Stat. § 44-4821 (1)(n) (1993).
N.H. Rev. Stat. Ann. § 402-C:25 (XII) (1983).
N.C. Gen. Stat. § 58-30-120 (12) (1994).
N.D. Cent. Code § 26.1-06.1-20.1 (n) (1995).
Ohio Rev. Code Ann. § 3903.21 (A)(12) (Anderson 1989).
40 Pa. Cons. Stat. Ann. § 221.23 (12) (1993).
R.I. Gen. Laws § 27-14.3-25 (14) (1994).
S.C. Code Ann. § 38-27-400(12) (Law. Co-op. Supp. 1995).
S.D. Codified Laws Ann. § 58-29B-49(12) (Supp. 1995).
Tenn. Code Ann. § 56-9-310(14) (1994).
Utah Code Ann. § 31A-27-314 (12) (1994).
Vt. Stat. Ann. tit. 8, § 7060(13) (1993).
Wis. Stat. Ann. § 645.46(12) (West 1995).

XV. Liquidator can intervene in any suit which might lead to the appointment of a receiver or trustee.

Mo. Rev. Stat. § 375.1182 (1994)

.1. The liquidator shall have the power:

. . .

(20) To intervene in any proceeding wherever instituted that might lead to the appointment of a receiver or trustee, and to act as receiver or trustee whenever the appointment is offered[.]

Similar authority:

Alaska Stat. § 21.78.130(j)(3) (1993).
Colo. Rev. Stat. Ann. § 10-3-520(v) (Michie 1994).
Conn. Gen. Stat. Ann. § 38a-923(20) (West Supp. 1995).
Ga. Code Ann. § 33-37-20(a)(22) (Supp. 1995).
Haw. Rev. Stat. § 431:15-310(a)(20) (1993).
Idaho Code § 41-3321(1)(t) (1991).
Ind. Stat. Ann. § 27-9-3-9(b)(20) (Burns 1994).
Iowa Code Ann. § 507C.21(1)(t) (West Supp. 1995).
Kan. Stat. Ann. § 40-3625(a)(22) (1993).
Ky. Rev. Stat. § 304.33-240(20) (Baldwin Supp. 1995).
Mich. Stat. Ann. § 24.18121 (t) (Callaghan Supp. 1995).
Minn. Stat. Ann. § 60B.25(20)(West Supp. 1995).
Miss. Code Ann. § 83-24-41 (v) (1991).
Mont. Code Ann. § 33-2-1345 (t) (1995).
Neb. Rev. Stat. § 44-4821 (1)(v) (1993).
N.H. Rev. Stat. Ann. § 402-C:25 (XIX) (1983).
N.C. Gen. Stat. § 58-30-120 (20) (1994).
N.D. Cent. Code § 26.1-06.1-20.1 (v) (1995).
Ohio Rev. Code Ann. § 3903.21 (A)(20) (Anderson 1989).
40 Pa. Cons. Stat. Ann. § 221.23 (20) (1993).
R.I. Gen. Laws § 27-14.3-25 (22) (1994).
S.C. Code Ann. § 38-27-400(20) (Law. Co-op. Supp. 1995).

S.D. Codified Laws Ann. § 58-29B-49(20) (Supp. 1995).
Tenn. Code Ann. § 56-9-310(22) (1994).
Utah Code Ann. § 31A-27-314 (20) (1994).
Vt. Stat. Ann. tit. 8, § 7060(21) (1993).
Wis. Stat. Ann. § 645.46(20) (West 1995).

XVI. No further actions can be commenced or continued against insurer or liquidator following entry of order of liquidation.

Mo. Rev. Stat. § 375.1188 (1994).

.1. Upon issuance of an order appointing a liquidator of a domestic insurer or of an alien insurer domiciled in this state, no action at law or equity or in arbitration shall be brought against the insurer or liquidator, whether in this state or elsewhere, nor shall any such existing actions be maintained or further presented after issuance of such order.The courts of this state shall give full faith and credit to injunctions against the liquidator or the company or the continuation of existing actions against the liquidator or company, when such injunctions are included in an order to liquidate an insurer issued pursuant to corresponding provisions in other states.

Similar authority:

Ala. Code § 27-32-21 (1986).
Alaska Stat. § 21.78.100(h) (1993).
Colo. Rev. Stat. Ann. § 10-3-523(1) (Michie 1994).
Conn. Gen. Stat. Ann. § 38a-926 (West 1992).
Fla. Stat. Ann. § 631.041(1) (West Supp. 1995).
Ga. Code Ann. § 33-37-23(a) (Supp. 1995).
Haw. Rev. Stat. § 431:15-313(a) (1993).
Idaho Code §§ 41-3324 (1991).
Ind. Stat. Ann. § 27-9-3-12(a) (Burns 1994).
Iowa Code Ann. § 507C.24(1) (West Supp. 1995).
Kan. Stat. Ann. § 40-3627(a) (1993).
Ky. Rev. Stat. § 304.33-270(1) (Baldwin Supp. 1995).

Mich. Stat. Ann. § 24.18124 (1) (Callaghan 1994).
Minn. Stat. Ann. § 60B.28 (1) (West 1986).
Miss. Code Ann. § 83-24-47 (1) (1991).
Mont. Code Ann. § 33-2-1348 (1) (1995).
Neb. Rev. Stat. § 44-4824 (1) (1993).
N.H. Rev. Stat. Ann. § 402-C:28 (I) (1983).
N.C. Gen. Stat. § 58-30-130 (a) (1994).
N.D. Cent. Code § 26.1-06.1-23.1 (1995).
Ohio Rev. Code Ann. § 3903.24 (A) (Anderson 1989).
40 Pa. Cons. Stat. Ann. § 221.26 (a) (1993).
R.I. Gen. Laws § 27-14.3-28 (a) (1994).
S.C. Code Ann. § 38-27-430(a) (Law. Co-op. 1985).
S.D. Codified Laws Ann. § 58-29B-55(1) (1990).
Tenn. Code Ann. § 56-9-313(a)(1) (1994).
Utah Code Ann. § 31A-27-317(1) (1994).
Wash. Rev. Code Ann. § 48.99.131(1) (West Supp. 1995).
Wis. Stat. Ann. § 645.49(1) (West 1995).

XVII. The liquidator can intervene in any pending suit outside of the state when liquidator determines it is in best interest of the estate to do so.

Mo. Rev. Stat. § 375.1188 (1994).

.1. . . . Whenever, in the liquidator's judgment, protection of the estate of the insurer necessitates intervention in an action against the insurer that is pending outside this state, he may intervene in the action.The liquidator may defend any action in which he intervenes pursuant to this section at the expense of the estate of the insurer.

Similar authority:

Ala. Code § 27-32-21 (1986).
Alaska Stat. § 21.78.100(h) (1993).
Colo. Rev. Stat. Ann. § 10-3-523(1) (Michie 1994).
Conn. Gen. Stat. Ann. § 38a-926 (West 1992).
Fla. Stat. Ann. § 631.041(1) (West Supp. 1995).

Ga. Code Ann. § 33-37-23(a) (Supp. 1995).
Haw. Rev. Stat. § 431:15-31y3(a) (1993).
Idaho Code §§ 41-3324 (1991).
Ind. Stat. Ann. § 27-9-3-12(a) (Burns 1994).
Iowa Code Ann. § 507C.24(1) (West Supp. 1995).
Kan. Stat. Ann. § 40-3627(a) (1993).
Ky. Rev. Stat. § 304.33-270(1) (Baldwin Supp. 1995).
Mich. Stat. Ann. § 24.18124 (1) (Callaghan 1994).
Minn. Stat. Ann. § 60B.28 (1) (West 1986).
Miss. Code Ann. § 83-24-47 (1) (1991).
Mont. Code Ann. § 33-2-1348 (1) (1995).
Neb. Rev. Stat. § 44-4824 (1) (1993).
N.H. Rev. Stat. Ann. § 402-C:28 (I) (1983).
N.C. Gen. Stat. § 58-30-130 (a) (1994).
N.D. Cent. Code § 26.1-06.1-23.1 (1995).
Ohio Rev. Code Ann. § 3903.24 (A) (Anderson 1989).
40 Pa. Cons. Stat. Ann. § 221.26 (a) (1993).
R.I. Gen. Laws § 27-14.3-28 (a) (1994).
S.C. Code Ann. § 38-27-430(a) (Law. Co-op. 1985).
S.D. Codified Laws Ann. § 58-29B-55(1) (1990).
Tenn. Code Ann. § 56-9-313(a)(1) (1994).
Utah Code Ann. § 31A-27-317(1) (1994).
Wash. Rev. Code Ann. § 48.99.131(1) (West Supp. 1995).
Wis. Stat. Ann. § 645.49(1) (West 1995).

XVIII. Setoff of mutual debts

Mo. Rev. Stat. § 375.1198.

. 1. Mutual debts or mutual credits, whether arising out of one or more contracts, between the insurer and another person in connection with any action or proceeding under sections 375.1150 to 375.1246, sections 374.216 and 374.217, RSMo, and section 382.302, RSMo, shall be set off and the balance only shall be allowed or paid, except as provided in subsections 2, 3, 4, 5 and 6 of this section and section 375.1204.

.2. No setoff shall be allowed in favor of any person where:

(1) The obligation of the insurer to the person would not as of the date of the filing of a petition for liquidation entitle the person to share as a claimant in the assets of the insurer;

(2) The obligation of the insurer to the person was purchased by or transferred to the person with a view to its being used as a setoff; or

(3) The obligation of the person is to pay an assessment levied against the members or subscribers of the insurer, or is to pay a balance upon a subscription to the capital stock of the insurer, or is in any other way in the nature of a capital contribution; or

(4) The obligation of the insurer is owed to an affiliate of such person or to any entity or association, rather than the person; or

(5) The obligation of the person is owed to an affiliate of the insurer or to any other entity or association, rather than the insurer; or

(6) The obligations between the person and the insurer arise from reinsurance relationships resulting in business which is both ceded to and assumed from the insurer.

3. As soon as practicable, the receiver shall provide persons who assumed business from the insurer as reinsurers with statements of account identifying debts which are currently due and payable to the insurer.Such persons may set off against such debts only mutual credits which are currently due and payable by the insurer to such persons for the period covered by the accounting statements.

4. A person who ceded business to the insurer may set off debts due the insurer against only those mutual credits which the

person has paid or which have been allowed in a delinquency proceeding.

5. Notwithstanding the foregoing, a setoff of sums due on obligations in the nature of those prescribed in subdivision (6) of subsection 2 of this section shall be allowed for those debts accruing from business written under reinsurance contracts which were entered into, renewed or extended with the express written approval of the director where Missouri is the state of domicile of the insolvent insurer and when in the judgment of the director such action is deemed necessary or advisable in order to prevent or mitigate a threatened impairment or insolvency of a domiciliary insurer, in connection with supervision or conservation proceedings pursuant to this act or otherwise in connection with the exercise of the director's regulatory responsibilities concerning a threatened impairment or insolvency without the institution of any delinquency proceedings.

6. The provisions of this section shall apply to all obligations incurred under contracts entered into, renewed, or extended on or after July 1, 1992, and to any existing contract with a termination date longer than one year from January 1, 1993, and shall supersede any contractual provisions which might be construed to enlarge the setoff rights of any person under any contract with the insurer; provided that the provisions of subdivision (6) of subsection 2 and subsections 3, 4 and 5 of this section shall not apply to insurers or reinsurers until such time that the director determines that substantially similar provisions are effective in a sufficient number of states so as not to place domestic insurers or reinsurers at a competitive disadvantage.The director shall promulgate a rule announcing any determination as is necessitated by this subsection.

Similar authority:

Ala. Code § 27-32-29 (1986).
Alaska Stat. § 21.78.270 (1993).

Ariz. Rev. Stat. Ann. § 20-638 (1990).
Ark. Code Ann. § 23-68-127 (1987).
Colo. Rev. Stat. Ann. § 10-3-529 (Michie 1994).
Conn. Gen. Stat. Ann. § 38a-932 (West 1992 & Supp. 1995).
Del. Code Ann. tit. 18, § 5927 (1989).
Fla. Stat. Ann. § 631.281 (West 1984).
Ga. Code Ann. § 33-37-29 (Supp. 1995).
Haw. Rev. Stat. § 431:15-319 (1993).
Idaho Code §§ 41-3330 (1991).
Ill. Rev. Stat. ch. 215, para. 5, § 206 (Supp. 1995).
Ind. Stat. Ann. § 27-9-3-28 (Burns Supp. 1995).
Iowa Code Ann. § 507C.30 (West 1988 & Supp. 1995).
Kan. Stat. Ann. § 40-3633 (1993).
Ky. Rev. Stat. § 304.33-330 (Baldwin 1988).
La. Rev. Stat. Ann. § 747 (West 1995).
Me. Rev. Stat. Ann. tit. 24-A, § 4381 (West 1991).
Md. ann. Code art. 48A, § 159 (1994).
Mich. Stat. Ann. § 24.18130 (Callaghan Supp. 1995).
Minn. Stat. Ann. § 60B.34 (West 1986).
Miss. Code Ann. § 83-24-59 (1991).
Mont. Code Ann. § 33-2-1359 (1995).
Neb. Rev. Stat. § 44-4830 (1993).
Nev. Rev. Stat. § 696B.440 (1991).
N.H. Rev. Stat. Ann. § 402-C:34 (1983).
N.J. Stat. Ann. § 17:30C-27 (West 1994).
N.M. Stat. Ann. § 59A-41-45 (1991).
N.Y. Ins. Law § 7427 (Mckinney 1985).
N.C. Gen. Stat. § 58-30-160 (1994).
N.D. Cent. Code § 26.1-06.1-29 (1995).
Ohio Rev. Code Ann. § 3903.30 (Anderson 1989).
Okla. Stat. Ann. tit. 36, § 1928 (West 1990).
Or. Rev. Stat. § 734.370 (1993).
40 Pa. Cons. Stat. Ann. § 221.32 (1993).
R.I. Gen. Laws § 27-14.3-34 (1994).
S.C. Code Ann. § 38-27-490 (Law. Co-op. 1985).

S.D. Codified Laws Ann. §§ 58-29B-86 & -87 (1990 & Supp. 1995).
Tenn. Code Ann. § 56-9-319 (1994).
Utah Code Ann. § 31A-27-323 (1994).
Vt. Stat. Ann. tit. 8, § 7069 (1993).
Va. Code § 38.2-1515 (1994).
Wash. Rev. Code Ann. § 48.31.135 (West Supp. 1995).
W. Va. Code § 33-10-28 (1992).
Wis. Stat. Ann. § 645.56 (West 1995).
Wyo. Stat. § 26-28-126 (1993).

XIX. Reinsurers liability not reduced because of delinquency proceedings.

Mo. Rev. Stat. § 375.1202 (1994).

The amount recoverable by the liquidator from reinsurers shall not be reduced as a result of the delinquency proceedings, regardless of any provision in the reinsurance contract or other agreement. Payment made directly to an insured or other creditor shall not diminish the reinsurer's obligation to the insurer's estate.

Similar authority:

Alaska Stat. § 21.78.272 (1993).
Colo. Rev. Stat. Ann. § 10-3-531 (Michie 1994).
Conn. Gen. Stat. Ann. § 38a-934 (West 1992).
Ga. Code Ann. § 33-37-31 (Supp. 1995).
Haw. Rev. Stat. § 431:15-321 (1993).
Idaho Code §§ 41-3332 (1991).
Ind. Stat. Ann. § 27-9-3-30 (Burns 1994).
Iowa Code Ann. § 507C.32 (West 1988).
Kan. Stat. Ann. § 40-3634 (1993).
Ky. Rev. Stat. § 304.33-350 (Baldwin 1988).
Mich. Stat. Ann. § 24.18132 (Callaghan 1994).
Minn. Stat. Ann. § 60B.36 (West 1986).
Miss. Code Ann. § 83-24-63 (1991).
Mont. Code Ann. § 33-2-1361 (1995).

Neb. Rev. Stat. § 44-4832 (1993).
N.H. Rev. Stat. Ann. § 402-C:36 (1983).
N.C. Gen. stat. § 58-30-170 (1994).
N.D. Cent. Code § 26.1-06.1-31 (1995).
Ohio Rev. Code Ann. § 3903.32 (Anderson 1989).
40 Pa. Cons. Stat. Ann. § 221.34 (1993).
R.I. Gen. Laws § 27-14.3-36 (1994).
S.D. Codified Laws Ann. § 58-29B-94 (1990).
Utah Code Ann. § 31A-27-326 (1994).
Vt. Stat. Ann. tit. 8, § 7071 (1993).
Wis. Stat. Ann. § 645.58 (West 1995).2

XX. Judgment entered after commencement of liquidation proceeding not to be considered as evidence of insurer's liability or the amount of damages.

Mo. Rev. Stat. § 375.1208 (1994).

.4. No judgment or order against an insured or the insurer entered after the date of filing of a successful petition for liquidation, and no judgment or order against an insured or the insurer entered at any time by default or by collusion need be considered as evidence of liability or of the amount of damages.

Similar authority:

Ala. Code § 27-32-30(c) (1986).
Alaska Stat. § 21.78.170(g) (1993).
Ariz. Rev. Stat. Ann. § 20-639(C) (1990).
Ark. Code Ann. § 23-68-128(c) (1987).
Colo. Rev. Stat. Ann. § 10-3-535(4) (Michie 1994).
Conn. Gen. Stat. Ann. § 38a-938(d) (West Supp. 1995).
Del. Code Ann. tit. 18, § 5928(c) (1989).
Fla. Stat. Ann. § 631.181(2)(d) (West Supp. 1995).
Ga. Code Ann. § 33-37-35(d) (Supp. 1995).
Haw. Rev. Stat. § 431:15-326(d) (1993).
Idaho Code §§ 41-3336(4) (1991).

Ill. Rev. Stat. ch. 215, para. 5, § 206 (Supp. 1995).
Ind. Stat. Ann. § 27-9-3-34(d) (Burns 1994).
Iowa Code Ann. § 507C.36(4) (West 1988).
Kan. Stat. Ann. § 40-3637(d) (1993).
Ky. Rev. Stat. § 304.33-370(3) (Baldwin 1988).
La. Rev. Stat. Ann. § 749.D(4) (West 1995).
Me. Rev. Stat. Ann. tit. 24-A, § 4378.3 (West 1990).
Md. Ann. Code art. 48A, § 160 (c) (1994).
Mich. Stat. Ann. § 24.18136 (4) (Callaghan 1994).
Minn. Stat. Ann. § 60B.38 (3) (West 1986).
Miss. Code Ann. § 83-24-71 (4) (1991).
Mont. Code Ann. § 33-2-1365 (4) (1995).
Neb. Rev. Stat. § 44-4836 (4) (1993).
N.H. Rev. Stat. Ann. § 402-C:38 (III) (1983).
N.J. Stat. Ann. § 17:30C-28 (c) (West 1994).
N.C. Gen. Stat. § 58-30-190 (d) (1994).
N.D. Cent. Code § 26.1-06.1-35.4 (1995).
Ohio Rev. Code Ann. § 3903.36 (D) (Anderson 1989).
Or. Rev. Stat. § 734.380(4) (1993).
40 Pa. Cons. Stat. Ann. § 221.38 (c) (1993).
R.I. Gen. Laws § 27-14.3-40 (d) (1994).
S.C. Code Ann. § 38-27-550(d) (Law. Co-op. 1985).
S.D. Codified Laws Ann. § 58-29B-110 (1990).
Tenn. Code Ann. § 56-9-324(d) (1994).
Utah Code Ann. § 31A-27-329 (1994).
Vt. Stat. Ann. tit. 8, § 7075 (1994).
W. Va. Code § 33-10-29 (1992).
Wyo. Stat. § 26-28-127 (1993).

XXI. Attachment and garnishment of assets of estate not allowed.

Mo. Rev. Stat. § 375.1244 (1994).

During the pendency in this or any other state of a liquidation proceeding, whether called by that name or not, no action or proceeding in the nature of an attachment, garnishment or levy

of execution shall be commenced or maintained in this state against the delinquent insurer or its assets.

Similar authority:

Ala. Code § 27-32-21 (1986).
Alaska Stat. § 21.78.190 (1993).
Ariz. Rev. Stat. Ann. § 20-630 (1990).
Ark. Code Ann. § 23-68-120 (1987).
Colo. Rev. Stat. Ann. § 10-3-556 (Michie 1994).
Del. Code Ann. tit. 18, § 5919 (1989).
Ga. Code Ann. § 33-37-56 (Supp. 1995).
Haw. Rev. Stat. § 431:15-408 (1993).
Idaho Code §§ 41-3357 (1991).
Ill. Rev. Stat. ch. 215, para. 5, § 221.9 (1993).
Ind. Stat. Ann. § 27-9-4-8 (Burns 1994).
Iowa Code Ann. § 507C.57 (West 1988).
Kan. Stat. Ann. § 40-3655 (1993).
Ky. Rev. Stat. § 304.33-580 (Baldwin 1988).
La. Rev. Stat. Ann. § 762 (West 1995).
Me. Rev. Stat. Ann. tit. 24-A, § 4369 (West 1990).
Md. Ann. Code art. 48A, § 151 (1994).
Mich. Stat. Ann. § 24.18157 (Callaghan 1994).
Minn. Stat. Ann. § 60B.59 (West 1986).
Miss. Code Ann. § 83-24-113 (1991).
Mont. Code Ann. § 33-2-1386 (1995).
Neb. Rev. Stat. § 44-4857 (1993).
Nev. Rev. Stat. § 696B.340 (1991).
N.H. Rev. Stat. Ann. § 402-C:59 (1983).
N.J. Stat. Ann. § 17:30C-22 (West 1994).
N.Y. Ins. Law § 7414 (McKinney 1985).
N.C. Gen. Stat. § 58-30-295 (1994).
N.D. Cent. Code § 26.1-06.1-56 (1995).
Ohio Rev. Code Ann. § 3903.57 (Anderson 1989).
Okla. Stat. Ann. tit. 36, § 1920 (West 1990).
Or. Rev. Stat. § 734.320 (1993).

40 Pa. Cons. Stat. Ann. § 2221.60 (1993).
R.I. Gen. Laws § 27-14.3-61 (1994).
S.D. Codified Laws § 58-29B-157 (1990).
S.C. Code Ann. § 38-27-980 (1985).
Tenn. Code Ann. § 56-9-408 (1994).
Vt. Stat. Ann. tit. 8, § 7098 (1993).
Wash. Rev. Code Ann. § 48.99.070 (West Supp. 1995).
W. Va. Code § 33-10-20 (1992).
Wis. Stat. Ann. § 645.88 (West 1995).
Wyo. Stat. § 26-28-118 (1993).